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Electronically Filed
Dec 07 2020 10:14 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**RECORD OF DISCIPLINARY PROCEEDINGS,
PLEADINGS AND TRANSCRIPT OF HEARING**

Thomas Pitaro, Esq.
Nevada Bar No. 1332
Emily Strand, Esq.
Nevada Bar. No.15339
601 Las Vegas Boulevard
Las Vegas, NV 89101

Counsel for Respondent

IN THE MATTER OF)
DISCIPLINE OF)
CHRISTOPHER ARABIA, ESQ.,)
BAR NO. 9749)

1. Nature of the Case

Christopher Arabia, Esq. (“Respondent”) appeared before a Formal Hearing Panel (“Panel”) of the Southern Nevada Disciplinary Board on August 31, 2020. The presiding Panel consisted of Marc Cook, Esq., Chair, Jarrod Rickard, Esq. and lay-member Anne Kingsley. Assistant Bar Counsel R. Kait Flocchini, Esq. represented the State Bar of Nevada (“State Bar”). Thomas Pitaro, Esq. and Emily Strand, Esq. represented Respondent.

Respondent was, and is, the Nye County District Attorney. The State Bar's Complaint alleged that Respondent violated Rule 1.7 (Conflict of Interest: Current Clients) and Rule 8.4 (Misconduct) of the Nevada Rules of Professional Conduct ("RPC") by directing the Nye County Human

1 Resources Director to vacate an appeal hearing requested by a Deputy
2 District Attorney, whose employed Respondent had terminated.
3 Respondent denied that his conduct violated the Rules of Professional
4 Conduct and argued that his directive was protected by governmental
5 immunity.

6 The Panel heard testimony from the Nye County Human Resource
7 Director, outside counsel Rebecca Bruch, Esq., Deputy District Attorney
8 Bradley Richardson, Esq., Deputy District Attorney Marla Zlotek, Esq. and
9 Respondent. The State Bar offered nine Exhibits consisting of State Bar
10 pleadings and notices, the correspondence by which the appeal hearing was
11 requested and cancelled, and Respondent's responses to the initial
12 grievance in the disciplinary action.

13 Prior to the Formal Hearing, through motion practice, it was found
14 that the qualified immunity set forth in NRS 41.032 was not a defense to
15 the alleged misconduct in this disciplinary matter.

16 After the Formal Hearing, the hearing panel found that Respondent's
17 directive alone caused the appeal hearing regarding Respondent's
18 termination of a Deputy District Attorney to be cancelled. It also found

1 that Respondent knew litigation regarding the same termination would
2 trigger appointment of outside counsel because of the conflict created and
3 he failed to recognize the appeal hearing as a substantially similar
4 adversarial proceeding that should trigger the same appointment. Finally,
5 it found that Respondent failed to recognize his personal interest created a
6 substantial risk to his ability to fulfill his responsibilities to Nye County
7 when directing its Human Resources Director regarding the adversarial
8 proceeding.

9 It concluded that Respondent's directive violated RPC 1.7 (Conflict of
10 Interest: Current Clients) and RPC 8.4 (d) (Misconduct- prejudicial to the
11 administration of justice). The hearing panel also concluded that
12 Respondent's mental state when he violated the Rules of Professional
13 Conduct was negligent and that misconduct cause injury to the legal
14 proceedings and his client, Nye County.

15 The panel applied Standard 6.23 from the ABA Standards for
16 Imposing Lawyer Sanctions, which provides that a reprimand is the
17 appropriate baseline sanction for Respondent's misconduct. Although the
18 panel found aggravating factors and one mitigating factor, it concluded

1 that no upward or downward deviation from the baseline sanction was
2 warranted.

3 The panel recommends that Respondent be publicly reprimanded for
4 violation of RPC 1.7 (Conflict of Interest: Current Clients) and RPC 8.4(d)
5 (Misconduct- prejudicial to the administration of justice).

6 **2. Number of Grievances**

7 This case arose from a single grievance.

8 **3. Rules of Professional Conduct**

9 The Panel found that Respondent violated RPC 1.7 (Conflict of
10 Interest: Current Clients) and RPC 8.4(d) (Misconduct- prejudicial to the
11 administration of justice).

12 **4. Mental State**

13 The Panel found that Respondent acted negligently in violating the
14 Rules of Professional Conduct.

15 **5. Injury**

16 The Panel found that Respondent's conduct resulted in injury to the
17 legal proceeding and Respondent's client, Nye County.

1 **6. ABA Baseline**

2 The panel found the appropriate baseline to be ABA Standard 6.23,
3 which says “[r]eprimand is generally appropriate when a lawyer
4 negligently fails to comply with a court order or rule, and causes injury or
5 potential injury to a client of other party, or causes interference or potential
6 interference with a legal proceeding.”

7 **7. Aggravation and Mitigation**

8 Pursuant to SCR 102.5(1) (aggravation), the Panel found the
9 following ***aggravating*** factors in considering the discipline to be
10 imposed:

- 11 - refusal to acknowledge the wrongful nature of conduct
12 (SCR 102.5(1)(g); and
13 - substantial experience in the practice of law (SCR
14 102.5(1)(g);.

15 Pursuant to SCR 102.5(2) (mitigation), the Panel found Respondent’s
16 lack of prior discipline (SCR 102.5(2)(a) as a ***mitigating*** factor.

17 ///

1 **8. Summary of the Recommended Discipline**

2 The Panel found no reason to deviate from the baseline sanction of
3 reprimand. It recommends that the Court publicly reprimand Respondent
4 and that he pay SCR 120 costs.

5 DATED this 4th day of December, 2020.

6 **STATE BAR OF NEVADA**

7 Daniel M. Hooge, Bar Counsel

8 By: 
9 R. Kait Flocchini, Assistant Bar Counsel
10 Nevada Bar No. 9861
11 3100 W. Charleston Blvd. Suite 101
12 Las Vegas, Nevada 89102
13 (702) 382-2200

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1 Case No: OBC19-1383



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APR 06 2020

STATE BAR OF NEVADA
BY: *B. J. J.*
OFFICE OF BAR COUNSEL

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8 **STATE BAR OF NEVADA**
9 **SOUTHERN NEVADA DISCIPLINARY BOARD**

10 STATE BAR OF NEVADA,)
11)
12 Complainant,)
13 vs.)
14 CHRISTOPHER ARABIA, ESQ.,)
15 BAR NO. 9749)
Respondent.)

COMPLAINT

16 TO: Christopher Arabia, Esq.
17 c/o Thomas Pitaro, Esq.
18 601 Las Vegas Blvd. South
Las Vegas, Nevada 89101

19
20 PLEASE TAKE NOTICE that pursuant to Supreme Court Rule ("SCR") 105(2) a
21 VERIFIED RESPONSE OR ANSWER to this Complaint must be filed with the Office of Bar
22 Counsel, State Bar of Nevada, 3100 W. Charleston Blvd, Suite 100, Las Vegas, Nevada 89102,
23 within twenty (20) days of service of this Complaint. Procedure regarding service is addressed
24 in SCR 109.

1 Complainant, State Bar of Nevada ("State Bar"), by and through its Assistant Bar
2 Counsel, R. Kait Flocchini, is informed and believes as follows:

3 1. Attorney Christopher Arabia, Esq. ("Respondent"), Bar No. 9749, is currently an
4 active member of the State Bar of Nevada and at all times pertinent to this complaint had his
5 principal place of business for the practice of law located in Nye County, Nevada.

6 2. In 2019, Respondent was the Nye County District Attorney. He continues to be
7 the Nye County District Attorney.

8 3. On September 18, 2019, Respondent terminated Deputy District Attorney
9 Michael Vieta-Kabell's employment with the Nye County District Attorney's office.

10 4. On September 23, 2019, Kabell filed an appeal of his termination with the Nye
11 County Human Resources Department, citing a Nye County Code which provides for appeals
12 of disciplinary actions.

13 5. On September 24, 2019, the Nye County Human Resources Director notified
14 Kabell, Respondent, and the Nye County Manager via email that an appeal hearing had been
15 scheduled for October 9, 2019 at 1:30 p.m.

16 6. In response, on the same day, Respondent emailed the Nye County Human
17 Resources Director and the Nye County Manager, but not Kabell, stating:

18 It is my legal opinion as the Nye County District Attorney that you must
19 cease and desist from conducting the proposed meeting. The proposed hearing
20 is improper under NRS 252.070. Mr. Vieta-Kabell was an at-will employee
21 appointed (as opposed to hired) by the District Attorney's Office and terminable
22 at any time with or without cause. See NRS 252.070, Nye County Board of
County Commissioners Resolution 95-022, and Nye County Policies and
Procedures Manual Rev. 5-2017 ("at will" defined). As such, I have the right to
revoke Mr. Vieta-Kabell's appointment. See NRS 252.070.

23 Earlier this year, Mr. Vieta-Kabell asserted under oath that he was an "at-
24 will" employee when he gave sworn testimony that his position as Deputy DA did
25 not afford him due process protections against termination of employment. Now
he is contradicting his own prior sworn testimony and falsely claiming that he
did have such protections.

1 Please confirm via e-mail no later than 4:00 p.m. on Thursday, September
2 26, 2019, that you have vacated the proposed hearing regarding Mr. Vieta-
3 Kabell.

4 7. On September 25, 2019, the Nye County Human Resources Director emailed
5 Kabell, his counsel, the Nye County Manager, and Respondent to inform them that she was
6 instructed by Respondent to 'cease and desist from conducting the requested hearing' and
7 stating that there would not be a hearing on Kabell's appeal.

8 8. As Nye County District Attorney, Respondent regularly advised the Nye County
9 Human Resources Director and/or others in management positions in Nye County regarding
10 Nye County legal issues.

11 9. The Nye County Human Resources Director relied strictly on Respondent's
12 email when she cancelled the appeal hearing.

13 **COUNT ONE- RPC 1.7 (Conflict of Interest: Current Clients)**

14 10. RPC 1.7 states

15 (a) Except as provided in paragraph (b), a lawyer shall not represent a client
16 if the representation involves a concurrent conflict of interest. A concurrent
17 conflict of interest exists if:

18 (1) The representation of one client will be directly adverse to another
19 client; or

20 (2) There is a significant risk that the representation of one or more
21 clients will be materially limited by the lawyer's responsibilities to another client,
22 a former client or a third person or by a personal interest of the lawyer.

23 (b) Notwithstanding the existence of a concurrent conflict of interest under
24 paragraph (a), a lawyer may represent a client if:

25 (1) The lawyer reasonably believes that the lawyer will be able to provide
competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

1 (3) The representation does not involve the assertion of a claim by one
2 client against another client represented by the lawyer in the same litigation or
other proceeding before a tribunal; and

3 (4) Each affected client gives informed consent, confirmed in writing.

4 11. Respondent provided the Nye County Human Resources Director advice on the
5 handling of the Kabell's request for an appeal of his termination.

6 12. There is a significant risk that Respondent's advice to the Nye County Human
7 Resources Director was materially limited by his own personal interest in defending his
8 termination of Kabell.

9 13. Respondent did not advise Nye County Human Resources Director of the
10 concurrent conflict of interest.

11 14. Nye County did not give informed consent, confirmed in writing, to proceed with
12 Respondent advising Nye County on the termination issue despite Respondent's concurrent
13 conflict of interest.

14 15. In light of the foregoing, including without limitation paragraphs 2 through 9,
15 Respondent has violated RPC 1.7 (Conflict of Interest: Current Clients).

16 **COUNT TWO- RPC 8.4 (Misconduct)**

17 16. RPC 8.4(c) states "[i]t is professional misconduct for a lawyer to . . . (d) Engage
18 in conduct that is prejudicial to the administration of justice."

19 17. Respondent used his position as an advisor to Nye County to improperly
20 influence whether Kabell received an appeal hearing.

21 18. In light of the foregoing, including without limitation paragraphs 2 through 9,
22 Respondent has violated RPC 8.4(d) (Misconduct).

23
24 ///

1 WHEREFORE, Complainant prays as follows:

2 1. That a hearing be held pursuant to Nevada Supreme Court Rule 105;

3 2. That Respondent be assessed the costs of the disciplinary proceeding pursuant
4 to SCR 120; and

5 3. That pursuant to SCR 102, such disciplinary action be taken by the Southern
6 Nevada Disciplinary Board against Respondent as may be deemed appropriate under the
7 circumstances.

8 Dated this 6th day of April, 2020.

9 STATE BAR OF NEVADA
10 DANIEL M. HOOGE, Bar Counsel

11 Kait Flocchini
12 By: Kait Flocchini (Apr 6, 2020)
13 R. Kait Flocchini, Assistant Bar Counsel
14 Nevada Bar No. 9861
15 3100 W. Charleston Blvd, Suite 100
16 Las Vegas, Nevada 89102
17 (702)382-2200
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Arabia Complaint

Final Audit Report

2020-04-06

Created:	2020-04-06
By:	Kristi Faust (kristif@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA3GyqJelw1JDfhZ4oXq1znjwvEbMn21BA

"Arabia Complaint" History

-  Document created by Kristi Faust (kristif@nvbar.org)
2020-04-06 - 10:33:34 PM GMT - IP address: 68.224.139.231
-  Document emailed to Kait Flocchini (kaitf@nvbar.org) for signature
2020-04-06 - 10:33:54 PM GMT
-  Email viewed by Kait Flocchini (kaitf@nvbar.org)
2020-04-06 - 10:35:07 PM GMT - IP address: 107.220.215.132
-  Document e-signed by Kait Flocchini (kaitf@nvbar.org)
Signature Date: 2020-04-06 - 10:35:58 PM GMT - Time Source: server- IP address: 107.220.215.132
-  Signed document emailed to Kristi Faust (kristif@nvbar.org) and Kait Flocchini (kaitf@nvbar.org)
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Case No: OBC19-1383



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APR 06 2020

STATE BAR OF NEVADA
BY: *B. Feli*
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
vs.)
)
CHRISTOPHER ARABIA, ESQ.,)
BAR NO. 9749)
)
Respondent.)

DESIGNATION OF HEARING
PANEL MEMBERS

The following are members of the Disciplinary Board for the Southern District of Nevada. Pursuant to Nevada Supreme Court Rule (SCR) 105, you may issue peremptory challenge to five (5) such individuals by delivering the same in writing to the Office of Bar Counsel within twenty (20) days of service of the complaint.

The Chair of the Southern Nevada Disciplinary Board will thereafter designate a hearing panel of three (3) members of the Disciplinary Board, including at least one member who is not an attorney, to hear the above-captioned matter.

1. Ronald C. Bloxham, Esq.
2. Annette Bradley, Esq.

- 1 3. Katlyn Brady, Esq.
- 2 4. John E. Bragonje, Esq.
- 3 5. Shemilly Bricoe, Esq.
- 4 6. Jacqueline B. Carman, Esq.
- 5 7. Andrew A. Chiu, Esq.
- 6 8. James P. Chrisman, Esq.
- 7 9. Nell Christensen, Esq.
- 8 10. Marc P. Cook, Esq.
- 9 11. Bryan A. Cox, Esq.
- 10 12. Ira W. David, Esq.
- 11 13. Sandra DiGiacomo, Esq.
- 12 14. F. Thomas Edwards, Esq.
- 13 15. Matthew Fox, Esq.
- 14 16. Angela Guingcangco, Esq.
- 15 17. Parish D. Heshmati, Esq.
- 16 18. Kenneth E. Hogan, Esq.
- 17 19. Jennifer K. Hostetler, Esq.
- 18 20. Franklin Katschke, Esq.
- 19 21. Robert Kelley, Esq.
- 20 22. Christopher J. Lalli, Esq.
- 21 23. James T. Leavitt, Esq.
- 22 24. Michael B. Lee, Esq.
- 23 25. Anat R. Levy, Esq.
- 24 26. Jennifer Lloyd, Esq.
- 25

- 1 27. Jason R. Maier, Esq.
- 2 28. Russell E. Marsh, Esq.
- 3 29. Farhan Naqvi, Esq.
- 4 30. Michael J. Oh, Esq.
- 5 31. Dana Palmer Oswalt, Esq.
- 6 32. Brian J. Pezzillo, Esq.
- 7 33. Gary Pulliam, Esq.
- 8 34. Michael Rawlins, Esq.
- 9 35. Jericho Remitio, Esq.
- 10 36. Jarrod Rickard, Esq.
- 11 37. Miriam E. Rodriguez, Esq.
- 12 38. Vincent Romeo, Esq.
- 13 39. Daniel Royal, DO, HMD, JD, Esq.
- 14 40. Maria Veronica Saladino, Esq.
- 15 41. Africa A. Sanchez, Esq.
- 16 42. Jen J. Sarafina, Esq.
- 17 43. Jay Shafer, Esq.
- 18 44. Jeffrey G. Sloane, Esq.
- 19 45. Sarah E. Smith, Esq.
- 20 46. James Sweetin, Esq.
- 21 47. Stephen Titzer, Esq.
- 22 48. Dawn R. Throne, Esq.
- 23 49. Jacob J. Villani, Esq.
- 24 50. Dan R. Waite, Esq.
- 25

1 51. Reed J. Werner, Esq.

2 52. Shann D. Winesett, Esq.

3 LAY MEMBERS

4 53. Mary E. Albregts

5 54. Alexander Falconi

6 55. William M. Holland

7 56. Nicholas Kho

8 57. Grace Ossowski

9 58. Peter Ossowski

10 59. Harvey Weatherford

11
12 DATED this 6th day of April, 2020.

13 STATE BAR OF NEVADA
14 Daniel M. Hooge, Bar Counsel

15
16 By: 
17 R. Kait Flocchini, Assistant Bar Counsel
18 Nevada Bar No. 9861
19 3100 W. Charleston Blvd., Suite 100
20 Las Vegas, Nevada 89102
21 (702) 382-2200
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Christopher Arabia, Esq.
c/o Thomas Pitaro, Esq.
601 Las Vegas Blvd. South
Las Vegas, Nevada 89101



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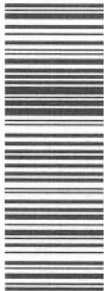
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State Bar of Nevada
Attn: Breanna McCulley
3100 W. Charleston Blvd., Ste. 100
Las Vegas, NV 89102

4.10.20 / complaint / OBC19-1383

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c/o Thomas Pitaro, Esq.
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1 **MTD**

2 THOMAS F. PITARO, ESQ.

3 Nevada Bar No. 1332

4 EMILY K. STRAND, ESQ.

5 Nevada Bar No. 15339

6 PITARO & FUMO, CHTD.

7 601 Las Vegas Boulevard

8 Las Vegas, NV 89101

9 Phone (702) 474-7554

10 Fax (702) 474-4210

11 Kristine.fumolaw@gmail.com

12 Attorneys for Respondent



FILED

APR 24 2020

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

7 **STATE BAR OF NEVADA**

8 **SOUTHERN NEVADA DISCIPLINARY BOARD**

9 STATE BAR OF NEVADA,

10 Complainant,

11 v.

12 CHRISTOPHER ARABIA, ESQ.,

13 Respondent.

Case No: OBC19-1383

MOTION TO DISMISS

15 **COMES NOW**, respondent, Christopher Arabia, by and through his attorneys of record,
16 THOMAS F. PITARO, ESQ. and EMILY K. STRAND, ESQ., of the law firm PITARO &
17 FUMO, CHTD., and hereby submits this Motion to Dismiss. This Motion is based on all the
18 filings and pleadings herein, the attached Memorandum of Points and Authorities, and any oral
19 argument deemed necessary.

20 **DATED** this 24th day of April, 2020.

21 Respectfully submitted,

22 /s/ Thomas F. Pitaro
23 Thomas F. Pitaro, Esq.
Nevada Bar No. 1332

22 /s/ Emily K. Strand
23 Emily K. Strand, Esq.
Nevada Bar No. 15339

24 *Attorneys for Respondent*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**
3 **Statement of Facts**

4 In 2018, the respondent, Christopher Arabia, was elected as the Nye County District
5 Attorney. He began his term in January of 2019 and still serves in that capacity. In his capacity
6 as District Attorney for Nye County, one of District Attorney Arabia's duties is to advise the Nye
7 County Human Resources Director and others in management positions in Nye County regarding
8 Nye County Legal Issues.

9 On September 18, 2019, District Attorney Arabia terminated Deputy District Attorney
10 Michael Vieta-Kabell's ("Kabell") employment with the Nye County District Attorney's office,
11 following months of on ongoing issues with Mr. Kabell's insubordination.

12 On September 23, 2019, Kabell filed an appeal of his termination with the Nye County
13 Human Resources Department. On September 24, 2019, Nye County Human Resources Director
14 scheduled an appeal hearing and notified Kabell, District Attorney Arabia, and the Nye County
15 Manager via email. In response, District Attorney Arabia emailed the Nye County Human
16 Resources Director and the Nye County Manager, stating:

17 It is my legal opinion as the Nye County District Attorney that you must cease
18 and desist from conducting the proposed meeting. The proposed hearing is
19 improper under NRS 252.070. Mr. Vieta-Kabell was an at-will employee appointed
20 (as opposed to hired) by the District Attorney's Office and terminable at any time
21 with or without cause. See NRS 252.070, Nye County Board of County
Commissioners Resolution 95-022, and Nye County Policies and Procedures
Manual Rev. 5-2017 ("at will" defined). As such, I have the right to revoke Mr.
Vieta-Kabell's appointment. See NRS 252.070.

22 Earlier this year, Mr. Vieta-Kabell asserted under oath that he was an "at-will"
23 employee when he gave sworn testimony that his position as Deputy DA did not
24 afford him due process protections against termination of employment. Now he is
contradicting his own prior sworn testimony and falsely claiming that he did have
such protections.

25 Please confirm via email no later than 4:00 p.m. on Thursday, September 26,
26 2019, that you have vacated the proposed hearing regarding Mr. Vieta-Kabell.
27

1 The testimony to which District Attorney Arabia was referring in his email occurred on
2 April 9, 2019. Mr. Kabell testified at a hearing in support of the Deputy District Attorney's
3 attempts to unionize. He stated that a union was necessary because he did not enjoy the same
4 benefits of those in the represented classification such as "due process in termination."¹

5 On September 25, 2019, the Nye County Human Resources Director emailed Kabell, his
6 counsel, the Nye County Manager, and District Attorney Arabia to inform them that she was
7 instructed by District Attorney Arabia to 'cease and desist from conducting the requested hearing'
8 and stating there would not be a hearing on Kabell's appeal.

9
10 **II.
Procedural History**

11 On April 6, 2020, the State Bar of Nevada filed a complaint against District Attorney
12 Arabia alleging violations of Nevada Rules of Professional Conduct (RPC) 1.7 and 8.4.
13 Specifically, they alleged that there was "a significant risk that [District Attorney Arabia's] advice
14 to the Nye County Human Resources Director was materially limited by his own personal interest
15 in defending his termination of Kabell." Thus, they allege that he violated RPC 1.7 Conflict of
16 Interest: Current Clients by not informing the Nye Country Human Resources Director of the
17 alleged concurrent conflict of interest and obtaining informed written consent to proceed with
18 advising the County.

19 Second, the State Bar also alleges that District Attorney Arabia violated RPC 8.4 by
20 "us[ing] his position as an advisor to Nye County to improperly influence whether Kabell received
21 an appeal hearing" thus, engaging in conduct that is prejudicial to the administration of justice.

22 As such, this motion follows.
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27 ¹ See *Nye Count Management Employees Assoc. v. Nye County*, Case No. 2018-012, State of Nevada
Local Government Employee-Management Relations Board.

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**III.
Statement of Law**

A. Failure to State a Claim

Pursuant to Nevada Rule of Civil Procedure 12(b)(5) and the State Bar of Nevada Disciplinary Rule of Procedure 15, a party may assert “failure to state a claim upon which relief can be granted” as a defense in response to a State Bar complaint.

B. The Discretionary Function Immunity of Prosecutors – as Administrators, Managers, and Advisers as well as Litigators

Nev. Rev. Stat. § 41.032 states that no action may be brought against the state, state agencies, political subdivisions, or any officer or employee of the state, its agencies, or its political subdivisions based upon the exercise or performance of a discretionary function or duty, whether or not the discretion involved is abused. Discretionary acts are defined as those which require the exercise of personal deliberation, decision and judgment. *Wayment v. Holmes*, 112 Nev. 232, 234, 912 P.2d 816, 817 (1996).

In *Wayment*, a deputy district attorney was discharged for alleged insubordination and unsatisfactory work performance. The employee brought a tortious discharge suit. The Second Judicial District Court granted the respondent district attorney's office's motion for summary judgment on the grounds that the employee presented no genuine issue of material fact and that the district attorney's office and its supervisors were immune from suit under Nev. Rev. Stat. § 41.032(2).

The court found that the district attorney's office was not an entity subject to suit because it is a department of Washoe County, and in the absence of statutory authorization, a department of the municipal government may not, in the departmental name, sue or be sued.

More important in relation to the instant matter is that the *Wayment* Court held that the supervisor that ordered the termination was immune because the complainant was an at-will employee and it was within the discretion of the district attorney to fire at-will employees. Since the supervisor was not acting in his individual capacity, due to the fact that the termination was undertaken pursuant to his duties, he was immune from liability.

1 The *Wayment* Court embraced this holding notwithstanding that the fired employee
2 argued that his challenges to his supervisor (contending that an indictment was defective and
3 should be dismissed and refiled) were compelled by the rules of lawyer professional conduct.²

4
5 **IV.
Argument**

6 A. The State Bar has failed to state a claim upon which relief can be granted.

7 There is no dispute of material fact in the present case. Neither side disputes District
8 Attorney Arabia's actions. The only question is whether those actions violated established ethics
9 requirements for lawyers in Nevada.

10 Mr. Arabia, in his capacity as District Attorney for Nye County, has a statutory duty to
11 provide legal advice to Nye County and its administrators.³ In the present case, he advised the
12 county as to how to respond to a hearing request for an employee, as is his duty. The State Bar
13 has argued that in doing so District Attorney Arabia violated ethical rules because his
14 representation of the county was materially limited by his personal interest, namely that he was
15 the one who terminated Kabell's employment. However, the reader of the Complaint is left to
16 speculate as to what the risk was and how District Attorney Arabia's actions were limited by that
17 risk.

18 By its very nature, a conflict of interest implies that the person has some stake in the
19 outcome of a matter. Here, District Attorney Arabia had nothing to lose/gain in advising the
20 county whether the hearing was legally proper. Regardless of who advised the county regarding
21 the hearing, the outcome would have been the same. The case law is clear that Deputy District
22 Attorneys are at-will employees⁴ and thus, by law Kabell was not entitled to a hearing. Since he

23 _____
24 ² The Court noted, however, that Wayment's "contention that he was terminated for complying with his
25 mandatory ethical duties is a mere allegation . . . unsupported by any evidence" and that his constant
26 arguing with his supervisor constituted actionable insubordination regardless of the merits of any concern
27 Wayment may have had about the propriety of the indictment. *See* 112 Nev. at 236-37, 912 P.2d at 818-
19.

³ *See* NRS 252.160

⁴ *See Wayment v. Holmes*, 112 Nev. 232, 912 P.2d 816 (1996).

1 had no stake in the outcome of the decision to have a hearing, District Attorney Arabia did not
2 have a conflict of interest, and as such, his actions clearly did not violate RPC 1.7.

3 Similarly, District Attorney Arabia did not violate RPC 8.4 by improperly influencing
4 whether or not Kabell got a hearing. District Attorney Arabia was not the one who actually
5 prevented Kabell from having a hearing, he merely advised the County that the hearing was not
6 legally justified under the statute. The statute which precludes at-will employees from receiving
7 hearings was in place long before Arabia became District Attorney and the ultimate decision as
8 to whether or not to have the hearing was made by the Nye County Manager. There is no way
9 that District Attorney Arabia had any control over the implementation of a statute which pre-
10 dated his candidacy nor did he exert any control over the Nye County Manager or that office. As
11 such, he cannot be disciplined for violating RPC 8.4.

12 None of the State Bar's claims rise to a level requiring relief. The State Bar cannot
13 demonstrate a violation of either RPC 1.7 or RPC 8.4. As such, they have failed to assert a claim
14 upon which relief can be granted and this action should be dismissed pursuant to NRCP 12(b)(5).

15
16 B. District Attorney Arabia's actions occurred during the performance of his duties as
District Attorney and as such, he has qualified immunity.

17 Even if the State Bar was able to state a claim for relief in this case, District Attorney
18 Arabia's actions occurred during the performance of his duties and as such, he is immune from
19 legal actions resulting from those decisions. *See Wayment v. Holmes*, 112 Nev. 232, 912 P.2d 816
20 (1996).

21 In *Wayment*, the court held that it was within the discretion of the District Attorney to fire
22 at-will employees; and due to the fact that the termination was undertaken pursuant to the DA's
23 duties, he was immune from liability for the termination. Here, Kabell was fired for
24 insubordination, failure to follow instructions, deviation from established procedures, and causing
25 interpersonal problems in the office. District Attorney Arabia's decision to terminate an employee
26 like Kabell is squarely within the exercise or performance of a discretionary function or duty, and
27 as such, under NRS § 41.032, no action may be brought against District Attorney Arabia for his

1 decision to terminate Kabell. Furthermore, the instant case does not involve any allegations of
2 violations of professional responsibility in litigation by the defendant district attorney, as was the
3 case in *Wayment*. Consequently, the instant matter is one even more favorable to the defendant
4 than *Wayment*, which found no liability for the employee attorney's discharge.

5 The statutory duties of the Nye County District Attorney specifically include the
6 obligation to inform the county on legal matters.⁵ In this case, District Attorney Arabia had an
7 ethical and statutory obligation to inform the county that the hearing being requested by Kabell
8 would be contrary to Nye County Code and other statutory provisions. Because District Attorney
9 Arabia's advice was given during the performance of his statutorily obligated duties, the State
10 Bar is precluded from bringing an action against him based on his advice, as he has immunity
11 pursuant to NRS § 41.032. Therefore, the Complaint should be dismissed.

12
13 C. The State Bar lacks authority over decisions made by a public official in his or her elected
capacity.

14 Through the present Complaint, the State Bar of Nevada is attempting to interfere with
15 the office of an elected official. The decisions that District Attorney Arabia made were not in his
16 personal capacity, but in his capacity as the District Attorney for Nye County. To allow the State
17 Bar to discipline the District Attorney for decisions he made in his elected capacity essentially
18 gives the State Bar power to override the decisions of elected officials and exert their control on
19 public offices such as the Office of the District Attorney.

20 Here, the only conceivable way that District Attorney Arabia could be found guilty of
21 ethical violations requires the assumption that District Attorney Arabia had something to lose by
22 allowing Kabell a hearing. In order to reach that conclusion, the State Bar would have to make
23 the unilateral determination that Deputy District Attorneys in Nevada are not at-will employees
24 and thus entitled to a hearing. If that was the case, District Attorney Arabia benefitted when he
25

26
27 ⁵ See NRS 252.160

advised that the hearing should not take place by ensuring a person he terminated was not reappointed to their previous position.

The problem with this analysis of course, is the fact that the State Bar does not have that level of authority. It is well-settled that Deputy District Attorneys are at-will employees. *See Wayment v. Holmes*, 112 Nev. 232, 912 P.2d 816 (1996). The State Bar cannot overrule Nevada Supreme Court precedent. Further, a State Bar disciplinary panel has no authority to provide Kabell any relief (including returning him to his previous position) because the authority to appoint Deputy District Attorney's is a power reserved to the District Attorney himself. *See* NRS 252.070.

The State Bar does, of course, generally have disciplinary authority over Nevada attorneys. But allowing the State Bar to discipline District Attorney Arabia for decisions he made in his elected capacity as a public official managing his office and advising other country government officials on legal matters would effectively give the State bar power to interfere with the decisions of any member of the bar who holds elected office.

Such action would undoubtedly have a chilling effect, both on lawyers who seek elected office, but also on lawyers who currently hold office. Essentially a decision in favor of the State Bar in the present case would give the State Bar the power to impose penalties on an elected attorney whenever State Bar officials disagree with a lawyer holding public office. This possibility poses the very real threat that current officeholders might refrain from performing their duties to the best of their abilities for fear of “rocking the boat.” Further persecution of Mr. Arabia could have very serious and lasting consequences on the Nevada legal, political, and judicial landscapes.

V. Conclusion

The present Complaint fails to adequately allege a complaint upon which relief could be granted. Even if it did, Mr. Arabia, as the District Attorney for Nye County, is entitled to immunity from actions taken as a result of his performance of his job duties. Any decision contrary to

1 District Attorney Arabia grants new and unfettered power to the State Bar which could seriously
2 infringe on the office of the District Attorney, the Attorney General, and any other elected officer
3 who is also a member of the bar. For all these reasons, District Attorney Arabia respectfully
4 requests that the Complaint in this case be dismissed with prejudice.

5 **DATED** this 24th day of April, 2020.

6 Respectfully submitted,

7
8 /s/ Thomas F. Pitaro
Thomas F. Pitaro, Esq.
9 Nevada Bar No. 1332

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

10 *Attorneys for Respondent*
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1 Case No: OBC19-1383



FILED

MAY 07 2020

STATE BAR OF NEVADA
BY: B. Felix
OFFICE OF BAR COUNSEL

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8 **STATE BAR OF NEVADA**
9 **SOUTHERN NEVADA DISCIPLINARY BOARD**

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11 STATE BAR OF NEVADA,)
12 Complainant,)
13 vs.)
14 CHRISTOPHER ARABIA, ESQ.,)
15 BAR NO. 9749)
Respondent.)

**OPPOSITION TO RESPONDENT'S
MOTION TO DISMISS COMPLAINT**

16
17 The State Bar of Nevada, by and through Assistant Bar Counsel R. Kait Flocchini, hereby
18 responds to Respondent's Motion to Dismiss Complaint and requests that the motion be
19 denied.

20 This Opposition is based on the following Memorandum of Points and Authorities, the
21 pleadings in this matter, and any oral argument requested by the Board Chair.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 The Motion to Dismiss argues that Respondent cannot be disciplined because he is an
24 elected official and, since he did not care if the fired employee received a hearing, he cannot be
25 disciplined for advising the Nye County Human Resources Director to immediately "cease and

1 desist" with the hearing. The first argument attempts to confuse the issues in the disciplinary
2 matter — the Complaint has no allegation that Respondent violated the Rules of Professional
3 Conduct ("RPC") because of the firing. Also, the immunity of a government official is not
4 absolute. The second argument requires evaluation of facts beyond the allegations in the
5 Complaint, and therefore, even if true are not a basis to dismiss the Complaint. For these
6 reasons, the Motion to Dismiss should be denied.

7 **Standard for a Motion to Dismiss**

8 Rule 8 of the Nevada Rules of Civil Procedure ("NRCP") provides that a claim "shall
9 contain (1) a short and plain statement of the claim showing the pleader is entitled to relief and
10 (2) a demand for judgment for the relief the pleader seeks." Pursuant to NRCP 12 (b)(5), a
11 complaint, or a portion thereof, may be dismissed for failure to state a claim upon which relief
12 may be granted. When entertaining a motion to dismiss, pursuant to NRCP 12(b)(5), the "task
13 is to determine whether or not the challenged pleading sets forth allegations sufficient to make
14 out the elements of a right to relief." *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110, 111
15 (1985). In making this determination, the allegations in the complaint "must be taken at 'face
16 value' and must be construed favorable in the plaintiff's behalf." *Id.* at 111-112 (citation
17 omitted). "The complaint cannot be dismissed for failure to state a claim unless it appears
18 beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of
19 fact, would entitle him to relief." *Id.* at 112. (citation omitted).

20 A motion to dismiss asks for a review of the sufficiency of a complaint. It does not
21 include consideration of any facts not contained in the pleading. The instant Motion to Dismiss
22 requires analysis of additional facts and/or irrelevant statutes.

23 ///

24 ///

25 ///

1 **Qualified Immunity Does not Override the State Bar's Ability to Regulate Lawyer**
2 **Conduct.**

3 The Motion to Dismiss argues that Respondent's firing of the Nye County Assistant
4 District Attorney cannot form the basis for discipline. See Motion at 6:16-7:4 and 7:13-8:9.
5 But the Complaint does not allege that any Rules of Professional Conduct were violated because
6 of the firing. The Complaint alleges that Respondent's conduct *after* he fired the Assistant
7 District Attorney violated the Rules of Professional Conduct. See *generally*, Complaint, filed
8 April 6, 2020, a true and correct copy of which is attached hereto as Exhibit A. Thus, the
9 argument cannot be used to analyze whether the allegations of the Complaint sufficiently make
10 out a claim for relief.

11 The Motion to Dismiss also asserts that prosecutorial qualified immunity means that
12 Respondent cannot be disciplined for his demand to the Nye County Human Resources
13 Director to 'cease and desist' conducting the requested hearing. See Motion at 7:5-11.
14 However, there are limits to the application of the qualified immunity and it cannot be used to
15 dismiss a sufficiently pled complaint. In *Edgar, supra*, 101 Nev. at 112, the Nevada Supreme
16 Court found that a civil complaint for malicious prosecution could not be dismissed based on
17 the qualified immunity alone. Moreover, immunizing an elected prosecutor from any sanction
18 for misconduct would render other Rules of Professional Conduct, such as RPC 3.8 (Special
19 Responsibilities of a Prosecutor), moot.

20 As is recognized in the Motion to Dismiss, "[t]he State Bar does, of course, have
21 disciplinary authority over Nevada attorneys" and Respondent is a Nevada-licensed attorney.

22 The Motion to Dismiss's request for an overbroad application of NRS 41.032 should be
23 denied.

24 ///

1 **Respondent's Mental State When he Engaged in the Alleged Misconduct is an**
2 **Element of What Sanction, or Relief in the Disciplinary Context, is Appropriate,**
3 **Not Whether the Allegations State a Claim Upon Which Relief May be Granted.**

4 The Motion to Dismiss argues that "the only conceivable way that [Respondent] could
5 be found guilty of ethical violations requires the assumption that [Respondent] had something
6 to lose by allowing Kabell a hearing." Motion at 7:20-22.

7 First, this argument requires analysis of facts outside the Complaint, and therefore,
8 cannot support dismissal.

9 Second, this argument acknowledges that there is a *set of facts*, which if accepted by the
10 trier of fact, would support sanctioning Respondent. This is the threshold for stating a claim
11 upon which relief may be granted.

12 Finally, the Supreme Court has instructed disciplinary panels that four factors must be
13 considered in sanctioning lawyers: (i) the duty violated, (ii) the mental state of the attorney
14 when he engaged in the misconduct, (iii) any injury or potential injury cause by the misconduct,
15 and (iv) any aggravating or mitigating factors that warrant a deviation from the guidelines for
16 sanctions. *See In re Discipline of Lerner, 124 Nev. 1232, 1246, 197 P.3d 1067, 1078 (2008).*
17 Thus, Respondent's mental state is irrelevant to proving if misconduct occurred, and therefore,
18 irrelevant to the evaluation of whether a complaint should be dismissed pursuant to NRC
19 12(b)(5).

20 This argument fails to establish that there is no set of facts upon which Respondent
21 could be sanctioned. It is not a basis for dismissing the Complaint.

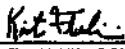
22 **Conclusion**

23 The Complaint alleges sufficient facts to make out the elements of a violation of RPC 1.7
24 (Conflict of Interest: Current Clients) and a violation of RPC 8.4 (Misconduct). The Motion to
25

1 Dismiss fails to assert otherwise, and instead, asks for consideration of facts beyond the
2 Complaint. The Motion should be denied.

3 Dated this 7th day of May, 2020.

4 STATE BAR OF NEVADA
5 DANIEL M. HOOGE, Bar Counsel

6 By: 
7 Kait Flocchini (May 7, 2020)
8 R. Kait Flocchini, Assistant Bar Counsel
9 Nevada Bar No. 9861
10 3100 W. Charleston Blvd, Suite 100
11 Las Vegas, Nevada 89102
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CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing
OPPOSITION TO RESPONDENT'S MOTION TO DISMISS COMPLAINT was
served via email to:

1. Ken Hogan, Esq. (Board Chair): ken@h2legal.com
2. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
emily@fumolaw.com.
3. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

Dated this 7 day of May, 2020.

Kristi Faust

Kristi Faust, an employee
of the State Bar of Nevada




2020.05.07-Opp to MTD

Final Audit Report

2020-05-07

Created:	2020-05-07
By:	Kristi Faust (kristif@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAuQZ3Gh5DHIIJBrGwcMwG4wsePAMIJzH

"2020.05.07-Opp to MTD" History

-  Document created by Kristi Faust (kristif@nvbar.org)
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-  Signed document emailed to Kristi Faust (kristif@nvbar.org) and Kait Flocchini (kaitf@nvbar.org)
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Adobe Sign

Exhibit A

1 Case No: OBC19-1383



FILED

APR 06 2020

STATE BAR OF NEVADA
BY: *B. Fili*
OFFICE OF BAR COUNSEL

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8 **STATE BAR OF NEVADA**
9 **SOUTHERN NEVADA DISCIPLINARY BOARD**

10 STATE BAR OF NEVADA,)
11)
12 Complainant,)
13 vs.)
14 CHRISTOPHER ARABIA, ESQ.,)
15 BAR NO. 9749)
Respondent.)

COMPLAINT

16 TO: Christopher Arabia, Esq.
17 c/o Thomas Pitaro, Esq.
18 601 Las Vegas Blvd. South
Las Vegas, Nevada 89101

19
20 PLEASE TAKE NOTICE that pursuant to Supreme Court Rule ("SCR") 105(2) a
21 VERIFIED RESPONSE OR ANSWER to this Complaint must be filed with the Office of Bar
22 Counsel, State Bar of Nevada, 3100 W. Charleston Blvd, Suite 100, Las Vegas, Nevada 89102,
23 within twenty (20) days of service of this Complaint. Procedure regarding service is addressed
24 in SCR 109.

1 Complainant, State Bar of Nevada ("State Bar"), by and through its Assistant Bar
2 Counsel, R. Kait Flocchini, is informed and believes as follows:

3 1. Attorney Christopher Arabia, Esq. ("Respondent"), Bar No. 9749, is currently an
4 active member of the State Bar of Nevada and at all times pertinent to this complaint had his
5 principal place of business for the practice of law located in Nye County, Nevada.

6 2. In 2019, Respondent was the Nye County District Attorney. He continues to be
7 the Nye County District Attorney.

8 3. On September 18, 2019, Respondent terminated Deputy District Attorney
9 Michael Vieta-Kabell's employment with the Nye County District Attorney's office.

10 4. On September 23, 2019, Kabell filed an appeal of his termination with the Nye
11 County Human Resources Department, citing a Nye County Code which provides for appeals
12 of disciplinary actions.

13 5. On September 24, 2019, the Nye County Human Resources Director notified
14 Kabell, Respondent, and the Nye County Manager via email that an appeal hearing had been
15 scheduled for October 9, 2019 at 1:30 p.m.

16 6. In response, on the same day, Respondent emailed the Nye County Human
17 Resources Director and the Nye County Manager, but not Kabell, stating:

18 It is my legal opinion as the Nye County District Attorney that you must
19 cease and desist from conducting the proposed meeting. The proposed hearing
20 is improper under NRS 252.070. Mr. Vieta-Kabell was an at-will employee
21 appointed (as opposed to hired) by the District Attorney's Office and terminable
22 at any time with or without cause. See NRS 252.070, Nye County Board of
County Commissioners Resolution 95-022, and Nye County Policies and
Procedures Manual Rev. 5-2017 ("at will" defined). As such, I have the right to
revoke Mr. Vieta-Kabell's appointment. See NRS 252.070.

23 Earlier this year, Mr. Vieta-Kabell asserted under oath that he was an "at-
24 will" employee when he gave sworn testimony that his position as Deputy DA did
25 not afford him due process protections against termination of employment. Now
he is contradicting his own prior sworn testimony and falsely claiming that he
did have such protections.

1 Please confirm via e-mail no later than 4:00 p.m. on Thursday, September
2 26, 2019, that you have vacated the proposed hearing regarding Mr. Vieta-
3 Kabell.

4 7. On September 25, 2019, the Nye County Human Resources Director emailed
5 Kabell, his counsel, the Nye County Manager, and Respondent to inform them that she was
6 instructed by Respondent to 'cease and desist from conducting the requested hearing' and
7 stating that there would not be a hearing on Kabell's appeal.

8 8. As Nye County District Attorney, Respondent regularly advised the Nye County
9 Human Resources Director and/or others in management positions in Nye County regarding
10 Nye County legal issues.

11 9. The Nye County Human Resources Director relied strictly on Respondent's
12 email when she cancelled the appeal hearing.

13 **COUNT ONE- RPC 1.7 (Conflict of Interest: Current Clients)**

14 10. RPC 1.7 states

15 (a) Except as provided in paragraph (b), a lawyer shall not represent a client
16 if the representation involves a concurrent conflict of interest. A concurrent
17 conflict of interest exists if:

18 (1) The representation of one client will be directly adverse to another
19 client; or

20 (2) There is a significant risk that the representation of one or more
21 clients will be materially limited by the lawyer's responsibilities to another client,
22 a former client or a third person or by a personal interest of the lawyer.

23 (b) Notwithstanding the existence of a concurrent conflict of interest under
24 paragraph (a), a lawyer may represent a client if:

25 (1) The lawyer reasonably believes that the lawyer will be able to provide
competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

1 (3) The representation does not involve the assertion of a claim by one
2 client against another client represented by the lawyer in the same litigation or
other proceeding before a tribunal; and

3 (4) Each affected client gives informed consent, confirmed in writing.

4 11. Respondent provided the Nye County Human Resources Director advice on the
5 handling of the Kabell's request for an appeal of his termination.

6 12. There is a significant risk that Respondent's advice to the Nye County Human
7 Resources Director was materially limited by his own personal interest in defending his
8 termination of Kabell.

9 13. Respondent did not advise Nye County Human Resources Director of the
10 concurrent conflict of interest.

11 14. Nye County did not give informed consent, confirmed in writing, to proceed with
12 Respondent advising Nye County on the termination issue despite Respondent's concurrent
13 conflict of interest.

14 15. In light of the foregoing, including without limitation paragraphs 2 through 9,
15 Respondent has violated RPC 1.7 (Conflict of Interest: Current Clients).

16 **COUNT TWO- RPC 8.4 (Misconduct)**

17 16. RPC 8.4(c) states "[i]t is professional misconduct for a lawyer to . . . (d) Engage
18 in conduct that is prejudicial to the administration of justice."

19 17. Respondent used his position as an advisor to Nye County to improperly
20 influence whether Kabell received an appeal hearing.

21 18. In light of the foregoing, including without limitation paragraphs 2 through 9,
22 Respondent has violated RPC 8.4(d) (Misconduct).

23
24 ///

1 WHEREFORE, Complainant prays as follows:

2 1. That a hearing be held pursuant to Nevada Supreme Court Rule 105;

3 2. That Respondent be assessed the costs of the disciplinary proceeding pursuant
4 to SCR 120; and

5 3. That pursuant to SCR 102, such disciplinary action be taken by the Southern
6 Nevada Disciplinary Board against Respondent as may be deemed appropriate under the
7 circumstances.

8 Dated this 6th day of April, 2020.

9 STATE BAR OF NEVADA
10 DANIEL M. HOOGE, Bar Counsel

11 Kait Flocchini
12 By: Kait Flocchini (Apr 6, 2020)
13 R. Kait Flocchini, Assistant Bar Counsel
14 Nevada Bar No. 9861
15 3100 W. Charleston Blvd, Suite 100
16 Las Vegas, Nevada 89102
17 (702)382-2200
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Arabia Complaint

Final Audit Report

2020-04-06

Created:	2020-04-06
By:	Kristi Faust (kristif@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA3GyqJew1JDfhZ4oXq1znjwvEbMn21BA

"Arabia Complaint" History

-  Document created by Kristi Faust (kristif@nvbar.org)
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2020-04-06 - 10:33:54 PM GMT
-  Email viewed by Kait Flocchini (kaitf@nvbar.org)
2020-04-06 - 10:35:07 PM GMT - IP address: 107.220.215.132
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-  Signed document emailed to Kristi Faust (kristif@nvbar.org) and Kait Flocchini (kaitf@nvbar.org)
2020-04-06 - 10:35:58 PM GMT



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FILED
MAY 14 2020
STATE BAR OF NEW JERSEY
BY: B. Felix
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA,
Complainant,
vs.
CHRISTOPHER ARABIA, ESQ.,
BAR NO. 9749
Respondent.

On April 24, 2020, the Respondent, Christopher Arabia, by and through his counsel of record, Thomas F. Pitaro, Esq., and Emily K. Strand, Esq., filed a Motion to Dismiss the above-referenced matter. On May 7, 2020, the State Bar of Nevada, by and through Assistant Bar Counsel, R. Kait Flocchini, Esq., filed an Opposition to Respondent's Motion to Dismiss Complaint.

-1-

1 **FINDINGS OF FACT and CONCLUSIONS OF LAW**

2 The Chair finds that on its face, the Complaint sufficiently states claims upon two
3 provisions of the Rules of Professional Conduct. The analysis necessary to adjudicate the
4 Motion, then, concerns two remaining inquiries.

5 The first question to be addressed is whether there is any set of facts upon which it can
6 be proven that Respondent's communication to the HR director was materially limited by
7 Respondent's interests (see Complaint, Para. 12) and/or that the communication was
8 prejudicial to the administration of justice (see Complaint, Para. 17). The Chair finds those
9 facts could potentially be proven, although it would appear that if everything that was said in
10 the Respondent's communication was complete and accurate (as to the absence of right of a
11 Deputy District Attorney to a termination appeal) it could be exceedingly difficult to prove
12 either of the Claims under the required standard. The accuracy of the Respondent's citations
13 within the communication, however, is an issue for summary judgment rather than dismissal.

14 The second inquiry relevant to adjudicating this Motion is the applicability of
15 qualified discretionary-function immunity in dismissing a disciplinary complaint. It is worth
16 stating that the function of disciplinary proceedings is not to assess the Respondent's conduct
17 within the limited context of his specific job description, but to assess his conduct against the
18 obligations he has accepted, more broadly, as a licensed attorney. The rules apply to all
19 attorneys equally. The Chair accordingly holds that the qualified immunity doctrine is not
20 applicable to disciplinary proceedings, and to the contrary, I conclude as a matter of law, that
21 the doctrine applies only to insulate state employees and officials from liability in negligence
22 torts. See Martinez v. Maruszczak, 168 P.3d 720, 727 (2007) (where the Nevada Supreme Court
23 observed that §41.032(2) mirrored the Federal Tort Claims Act ("FTCA")); see also City of
24 Boulder City v. Boulder Excavating, Inc., 124 Nev. 749, 756, 191 P.3d 1175, 1179 (2008)
25 (explaining succinctly that "NRS 41.032 provides that government actors following statutory

1 guidelines or exercising their discretion are immune from common law tort actions in
2 connection with their statutory duties or their discretion"). As noted, this is a disciplinary
3 Complaint, not sounding in tort.

4 It should be further noted, that qualified immunity is an affirmative defense that must
5 be proven, which -- even if the doctrine were applicable in these circumstances -- creates
6 questions of fact that would preclude dismissal, and perhaps, even summary judgment. See
7 e.g. City of Boulder City, supra, at 754-755; see also Edgar v. Wagner, 101 Nev. 226, 228, 699
8 P.2d 110, 112 (1985) (explaining that "protection from liability depends upon a showing that
9 the prosecutor entertained a good faith, reasonable belief in actions taken in an administrative
10 capacity").

11 Upon the foregoing, where there are a set of facts that could potentially be proven to
12 support the claims for relief, and where such claims are grounded upon the Rules of
13 Professional Conduct rather than sounding in common law tort, the Motion is **DENIED**.

14 **IT IS HEREBY FURTHER ORDERED** that, pursuant to Rule 12(a)(3) of the Nevada
15 Rules of Civil Procedure, Respondent's responsive pleading must be filed and served no later
16 than 14 days after the service of this Order.

17 Dated this 14 day of May, 2020.

18 STATE BAR OF NEVADA
19 SOUTHERN NEVADA DISCIPLINARY BOARD

20 By: Kenneth E Hogan
Kenneth E Hogan (May 14, 2020 12:36 PDT)
21 Ken Hogan, Esq.
22 Board Chair
23
24
25

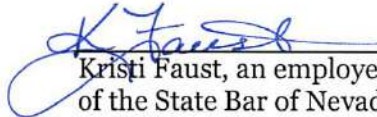
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CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing
ORDER was served via email to:

1. Ken Hogan, Esq. (Board Chair): ken@h2legal.com
2. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
emily@fumolaw.com.
3. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

Dated this 14 day of May, 2020.



Kristi Faust, an employee
of the State Bar of Nevada






2020.05.14- Order re Motion to Dismiss

Final Audit Report

2020-05-14

Created:	2020-05-14
By:	Kristi Faust (kristif@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA6Gq8ycD0wfwogdMaJ9MEorBreLBIdulD

"2020.05.14- Order re Motion to Dismiss" History

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-  Signed document emailed to Kristi Faust (kristif@nvbar.org) and Kenneth E Hogan (ken@h2legal.com)
2020-05-14 - 7:36:44 PM GMT



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1 **ANS**
2 THOMAS F. PITARO, ESQ.
3 Nevada Bar No. 1332
4 Kristine.fumolaw@gmail.com
5 EMILY K. STRAND, ESQ.
6 Nevada Bar No. 15339
7 emily@fumolaw.com
8 PITARO & FUMO, CHTD.
9 601 Las Vegas Boulevard
10 Las Vegas, NV 89101
11 Phone (702) 474-7554
12 Fax (702) 474-4210
13 Attorneys for Respondent



8 **STATE BAR OF NEVADA**

9 **SOUTHERN NEVADA DISCIPLINARY BOARD**

10 STATE BAR OF NEVADA,

11 Complainant,

12 v.

13 CHRISTOPHER ARABIA, ESQ.,

14 Respondent.

ANSWER

15
16 **COMES NOW**, respondent, District Attorney Christopher Arabia, by and through his
17 attorneys of record, THOMAS F. PITARO, Esq. and EMILY K. STRAND, Esq., of the law firm
18 PITARO & FUMO, CHTD., and hereby answers the Complainant's complaint as follows:

19 1. In answering Paragraph 1 of the Complaint on file herein, Respondent ADMITS
20 the allegations contained therein.

21 2. In answering Paragraph 2 of the Complaint on file herein, Respondent ADMITS
22 the allegations contained therein.

23 3. In answering Paragraph 3 of the Complaint on file herein, Respondent ADMITS
24 the allegations contained therein.

25 4. In answering Paragraph 4 of the Complaint on file herein, Respondent ADMITS
26 the allegations contained therein.
27

1 5. In answering Paragraph 5 of the Complaint on file herein, Respondent ADMITS
2 the allegations contained therein.

3 6. In answering Paragraph 6 of the Complaint on file herein, Respondent ADMITS
4 the allegations contained therein.

5 7. In answering Paragraph 7 of the Complaint on file herein, Respondent ADMITS
6 the allegations contained therein.

7 8. In answering Paragraph 8 of the Complaint on file herein, Respondent ADMITS
8 the allegations contained therein.

9 9. In answering Paragraph 9 of the Complaint on file herein, Respondent avers he is
10 without sufficient knowledge or information to form a belief as to the truth of the claim contained
11 in paragraph 9 of the Complainant's complaint, and, therefore, denies each such claim.
12

13 **COUNT ONE-RPC 1.7 (Conflict of Interest: Current Clients)**

14 10. In answering Paragraph 10 of the Complaint on file herein, Respondent ADMITS
15 the allegations contained therein.

16 11. In answering Paragraph 11 of the Complaint on file herein, Respondent ADMITS
17 the allegations contained therein.

18 12. In answering Paragraph 12 of the Complaint on file herein, Respondent DENIES
19 the allegations contained in Paragraph 12.

20 13. In answering Paragraph 13 of the Complaint on file herein, Respondent DENIES
21 the allegations that there was a concurrent conflict of interest and therefore denies the allegations
22 contained in Paragraph 13.

23 14. In answering Paragraph 14 of the Complaint on file herein, Respondent DENIES
24 the allegations that there was a concurrent conflict of interest and therefore denies the allegations
25 contained in Paragraph 14.

26 15. In answering Paragraph 15 of the Complaint on file herein, Respondent DENIES
27 the allegations contained in Paragraph 15.

1 **COUNT TWO-RPC 8.4 (Misconduct)**

2 16. In answering Paragraph 16 of the Complaint on file herein, Respondent ADMITS
3 the allegations contained therein.

4 17. In answering Paragraph 17 of the Complaint on file herein, Respondent DENIES
5 the allegations contained in Paragraph 17.

6 18. In answering Paragraph 18 of the Complaint on file herein, Respondent DENIES
7 the allegations contained in Paragraph 18.

8
9 **FIRST AFFIRMATIVE DEFENSE**

10 The State Bar of Nevada's Complaint and each claim for relief contained therein fails to
11 state a claim upon which relief may be granted.

12
13 **SECOND AFFIRMATIVE DEFENSE**

14 Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein
15 insofar as sufficient facts are not available after reasonable inquiry upon the filing of this
16 Answer, the Respondent therefore, reserves the right to amend this Answer to allege additional
17 Affirmative Defenses as subsequent investigation warrants.

18
19 **THIRD AFFIRMATIVE DEFENSE**

20 The State Bar of Nevada lacks in personam jurisdiction over this answering Respondent.

21 .

22 **FOURTH AFFIRMATIVE DEFENSE**

23 The State Bar of Nevada lacks subject matter jurisdiction over this issue.

24
25 **FIFTH AFFIRMATIVE DEFENSE**

26 The State Bar of Nevada's Complaint and each claim for relief contained therein are
27 barred by the Governmental Immunity Statutes of NRS Chapter 41.

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SIXTH AFFIRMATIVE DEFENSE

The State Bar of Nevada’s Complaint and each claim for relief contained therein are
barred by the failure of the State Bar of Nevada to plead those claims with particularity.

SEVENTH AFFIRMATIVE DEFENSE

This answering Respondent enjoys the privilege of qualified immunity.

EIGHTH AFFIRMATIVE DEFENSE

This answering Respondent was privileged to conduct the acts complained of.

NINTH AFFIRMATIVE DEFENSE

At all times, this answering Respondent acted in a legally permissible way.

DATED this 18th day of May, 2020.

Respectfully submitted,

/s/ Thomas F. Pitaro
Thomas F. Pitaro, Esq.
Nevada Bar No. 1332

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

Attorneys for Respondent

VERIFICATION
(Per NRS 15.010)

STATE OF NEVADA)
) ss:
CLARK COUNTY)

Under penalties of perjury, the undersigned declares that he is the Respondent named in the foregoing Answer and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes it to be true.

DATED this 20th day May, 2020



Case Nos.: OBC19-1383



FILED

MAY 29 2020

STATE BAR OF NEVADA
BY: B. Felix
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

CHRISTOPHER ARABIA, ESQ.

NV BAR No. 9749

Respondent.

ORDER APPOINTING
HEARING PANEL CHAIR

IT IS HEREBY ORDERED that the following member of the Southern Nevada
Disciplinary Board has been designated as the Hearing Panel Chair.

1. Marc Cook Esq., Chair

DATED this 27 day of May, 2020.

STATE BAR OF NEVADA

Kenneth E Hogan

By: Kenneth E Hogan (May 27, 2020 11:29 PDT)

Kenneth E. Hogan, Esq.

Nevada Bar No. 10083

Chair, Southern Nevada Disciplinary Board

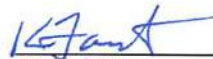
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CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing
ORDER was served via email to:

1. Marc Cook, Esq. (Panel Chair): mcook@bckltd.com; SLOpan@bckltd.com
2. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
emily@fumolaw.com; pitaro@gmail.com.
3. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

Dated this 29 day of May, 2020.



Kristi Faust, an employee
of the State Bar of Nevada

Case No: OBC19-1383



STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
vs.)
CHRISTOPHER ARABIA, ESQ.,)
BAR NO. 9749)
Respondent.)

NOTICE OF TELEPHONIC INITIAL
CASE CONFERENCE

PLEASE TAKE NOTICE, the telephonic Initial Case Conference in the above-entitled matter is set for **June 8, 2020, at 2:00 p.m.** The State Bar conference call number is 1-877-594-8353, participant passcode is 16816576#.

Dated this 1st day of June, 2020.

STATE BAR OF NEVADA
DANIEL M. HOOGE, Bar Counsel

By: _____

Kait Flocchini

R. Kait Flocchini, Assistant Bar Counsel
Nevada Bar No. 9861
3100 W. Charleston Blvd, Suite 100
Las Vegas, Nevada 89102


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CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing
NOTICE OF TELEPHONIC INITIAL CASE CONFERENCE was served via email
to:

- 1. Marc Cook, Esq. (Panel Chair): mcook@bckltd.com; SLopan@bckltd.com
- 2. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
emily@fumolaw.com; pitaro@gmail.com.
- 3. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

Dated this 1st day of June, 2020.



Kristi Faust, an employee
of the State Bar of Nevada

1 **MSJ**
2 THOMAS F. PITARO, ESQ.
3 Nevada Bar No. 1332
4 Kristine.fumolaw@gmail.com
5 EMILY K. STRAND, ESQ.
6 Nevada Bar No. 15339
7 emily@fumolaw.com
8 PITARO & FUMO, CHTD.
9 601 Las Vegas Boulevard
10 Las Vegas, NV 89101
11 Phone (702) 474-7554
12 Fax (702) 474-4210
13 Attorneys for Respondent



FILED

JUN 05 2020

STATE BAR OF NEVADA
BY: B. Felix
OFFICE OF BAR COUNSEL

8 **STATE BAR OF NEVADA**

9 **SOUTHERN NEVADA DISCIPLINARY BOARD**

10 STATE BAR OF NEVADA,

11 Complainant,

12 v.

13 CHRISTOPHER ARABIA, ESQ.,

14 Respondent.

MOTION FOR SUMMARY
JUDGMENT

15
16 **COMES NOW**, respondent, District Attorney Christopher Arabia, by and through his
17 attorneys of record, THOMAS F. PITARO, Esq. and EMILY K. STRAND, Esq., of the law firm
18 PITARO & FUMO, CHTD., and hereby moves for an Order Granting Summary Judgment in
19 favor of Christopher Arabia.

20 This Motion is based upon the filing and pleadings herein, the attached Memorandum of
21 Points and Authorities, and oral argument deemed necessary by the Chair.

22 DATED this 5th day of June, 2020.

23 Respectfully submitted,

24 /s/ Thomas F. Pitaro
25 Thomas F. Pitaro, Esq.
26 Nevada Bar No. 1332

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

27 *Attorneys for Respondent*

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1 **II. STATEMENT OF FACTS**

2 Attorney Christopher Arabia, Esq. (“Respondent”) is a duly admitted and active member
3 of the State Bar of Nevada. Since 2019, has been serving as the Nye County District Attorney and
4 at all times pertinent to this case, his principal place of business for the practice of law was located
5 in Nye, County Nevada.

6 One of the duties of a District Attorney in Nevada is to appoint Deputy District Attorneys
7 to assist the District Attorney in performing his or her duties. *See* NRS 252.070(1). When the
8 Respondent took office, he took over the management of the deputy district attorneys appointed
9 by his predecessor. One such deputy district attorney, was Michael Vieta-Kabell (“Kabell”).

10 Kabell objected to many of the Respondent’s new policies and procedures and was
11 regularly insubordinate. *See* October 11, 2019 Letter attached as Exhibit A. During the month of
12 September 2020, Respondent met with Chief Deputy District Attorney Marla Zlotek and Deputy
13 District Attorney Bradley Richardson multiples times to discuss Kabell’s ongoing
14 insubordination. *See* Affidavits of Mala Zlotek and Bradley Richardson attached as Exhibits B &
15 C. The three made the decision that Respondent should terminate Kabell’s employment. *Id.*

16 On September 18, 2019, the Respondent terminated Kabell’s employment with the Nye
17 County District Attorney’s office. On September 23, 2019, Kabell filed an appeal of his
18 termination with the Nye County Human Resources Department, citing a Nye County Code which
19 provides for appeals of disciplinary actions. *See* Appeal attached as Exhibit C. On September 24,
20 2019, the Nye County Human Resources Director notified Kabell, Respondent, and the Nye
21 County Manager via email that an appeal hearing had been scheduled for the Kabell matter for
22 October 9, 2019. Later that day, the Respondent emailed the Nye County Human Resources
23 Director and the Nye County Manager, stating:

24 “It is my legal opinion as the Nye County District Attorney that you must cease
25 and desist from conducting the proposed meeting. The proposed hearing is
26 improper under NRS 252.070. Mr. Vieta-Kabell was an at-will employee
27 appointed (as opposed to hired) by the District Attorney’s Office and terminable
at any time with or without cause. *See* NRS 252.070, Nye County Board of County
Commissioners Resolution 95-022, and Nye County Policies and Procedures

1 Manual Rev. 5-2017 (“at will” defined). As such, I have the right to revoke Mr.
2 Vieta-Kabell’s appointment. See NRS 252.070.

3 Earlier this year, Mr. Vieta-Kabell asserted under oath that he was an “at-will”
4 employee when he gave sworn testimony that his position as Deputy DA did not
5 afford him due process protections against termination of employment. Now he is
6 contradicting his own prior sworn testimony and falsely claiming that he did have
7 such protections.

8 Please confirm via email no later than 4:00 p.m. on Thursday, September 26,
9 2019, that you have vacated the proposed hearing regarding Mr. Vieta-Kabell.”

10 *See* Email from Arabia attached as Exhibit E.

11 The testimony to which District Attorney Arabia was referring in his email occurred on
12 April 9, 2019. Mr. Kabell testified at a hearing in support of the Deputy District Attorney’s
13 attempts to unionize. He stated that a union was necessary because he did not enjoy the same
14 benefits of those in the represented classification such as “due process in termination.” *See* Nye
15 County Management Employees Assoc. v. Nye County, Case No. 2018-012, attached as Exhibit F.

16 On September 25, 2019, the Nye County Human Resources Director emailed Kabell, his
17 counsel, the Nye County Manager, and the Respondent to inform them that she had been
18 instructed by Respondent to ‘cease and desist from conducting the requested hearing’ and stating
19 that there would not be a hearing on Kabell’s appeal. *See* Email attached as Exhibit G. Sometime
20 after that, Kabell filed a grievance with the State Bar of Nevada alleging that the Respondent had
21 violated his ethical duties.

22 **III. PROCEDURAL HISTORY**

23 On April 6, 2020, the State Bar of Nevada filed a complaint against Respondent alleging
24 violations of Nevada Rules of Professional Conduct (RPC) 1.7 and 8.4. *See* Exhibit H.

25 Specifically, the Complainant’s first claim alleged that there was “a significant risk” that
26 the Respondent’s advice to the Nye County Human Resources Director “was materially limited
27 by his own personal interest in defending his termination of Kabell.” Thus, they allege that he
violated RPC 1.7 Conflict of Interest: Current Clients by not informing the Nye Country Human

1 Resources Director of the alleged concurrent conflict of interest and obtaining informed written
2 consent to proceed with advising the County.

3 In their second claim, the Complainant alleges that the Respondent violated RPC 8.4 by
4 “us[ing] his position as an advisor to Nye County to improperly influence whether Kabell received
5 an appeal hearing” thus, engaging in conduct that is prejudicial to the administration of justice.

6 On April 24, 2020, the Respondent filed a Motion to Dismiss. *See* Exhibit I. On May 7,
7 2020, the State Bar of Nevada filed an Opposition. *See* Exhibit J. On May 14, 2020, the Board
8 Chairman for the State Bar of Nevada filed an Order denying the Respondent’s Motion to
9 Dismiss. *See* Exhibit K.

10 The Respondent filed a verified answer on May 20, 2020. *See* Exhibit L. This Motion for
11 Summary Judgment follows.

12
13 **IV. ARGUMENT**

14 There is no dispute of material fact in the present case. Neither side disputes the
15 Respondent’s actions. The only question is whether those actions violated established ethics
16 requirements for lawyers in Nevada.

17 **A. Prosecutors Have Discretionary Immunity**

18 Nev. Rev. Stat. § 41.032 states that no action may be brought against the state, state
19 agencies, political subdivisions, or any officer or employee of the state, its agencies, or its political
20 subdivisions based upon the exercise or performance of a discretionary function or duty, whether
21 or not the discretion involved is abused. Discretionary acts are defined as those which require the
22 exercise of personal deliberation, decision and judgment. *Wayment v. Holmes*, 112 Nev. 232, 234,
23 912 P.2d 816, 817 (1996).

24 In *Wayment*, a deputy district attorney was discharged for alleged insubordination and
25 unsatisfactory work performance. The employee brought a tortious discharge suit. The Second
26 Judicial District Court granted the respondent district attorney's office's motion for summary
27 judgment on the grounds that the employee presented no genuine issue of material fact and that

1 the district attorney's office and its supervisors were immune from suit under Nev. Rev. Stat. §
2 41.032(2).

3 The court found that the district attorney's office was not an entity subject to suit because
4 it is a department of Washoe County, and in the absence of statutory authorization, a department
5 of the municipal government may not, in the departmental name, sue or be sued.

6 More important in relation to the instant matter is that the *Wayment* Court held that the
7 supervisor that ordered the termination was immune because the complainant was an at-will
8 employee and it was within the discretion of the district attorney to fire at-will employees. Since
9 the supervisor was not acting in his individual capacity, due to the fact that the termination was
10 undertaken pursuant to his duties, he was immune from liability.

11 Here, the actions of the Respondent occurred during the performance of his duties and as
12 such, he is immune from legal actions resulting from those decisions. Kabell was fired for
13 insubordination, failure to follow instructions, deviation from established procedures, and causing
14 interpersonal problems in the office. The Respondent's decision to terminate Kabell is squarely
15 within the exercise or performance of a discretionary function or duty, and as such, under NRS §
16 41.032, no action may be brought against the Respondent for his decision to terminate Kabell.

17 Similarly, the statutory duties of the Nye County District Attorney specifically include the
18 obligation to inform the county on legal matters. *See* NRS 252.160. In this case, District Attorney
19 Arabia had an ethical and statutory obligation to inform the county that the hearing being
20 requested by Kabell would be contrary to Nye County Code and other statutory provisions.
21 Because District Attorney Arabia's advice was given during the performance of his statutorily
22 obligated duties, the State Bar is precluded from bringing an action against him based on his
23 advice, as he has immunity pursuant to NRS § 41.032.

24 There is no dispute of material fact as to the Respondent's actions, the only question one
25 of law: whether his decisions were discretionary and thus entitled to immunity. *Wayment* clearly
26 showed that the termination of an employee for insubordination constitutes a discretionary
27 decision. The fact that NRS 252.070(1) specifically gives District Attorneys the discretion to

1 appoint their deputies heavily implies that they would have the same discretion to terminate their
2 employment as well. Moreover, there is ample evidence that Kabell's termination came after
3 significant inter-office discussion with other senior-level employees. *See* Exhibits B and C. Thus
4 it is very likely the termination was discretionary and thus protected. Similarly, legal advice has
5 long been recognized as discretionary for purposes of *Strickland* and malpractice cases, therefore,
6 any advice the Respondent gave during the performance of his duties as DA would be
7 discretionary as well, and thus subject to immunity.

8
9 **B. There was no conflict of interest and thus no violation.**

10 The Respondent, in his capacity as District Attorney for Nye County, has a statutory duty
11 to provide legal advice to Nye County and its administrators. *See* NRS 252.160. In the present case,
12 he advised the county as to how to respond to a hearing request for an employee, as is his duty.
13 The Complainant has argued that in doing so the Respondent violated ethical rules because his
14 representation of the county was materially limited by his personal interest, namely that he was
15 the one who terminated Kabell's employment. However, the reader of the Complaint is left to
16 speculate as to what the risk was and how the Respondent's actions were limited by that risk.

17 By its very nature, a conflict of interest implies that the person has some stake in the
18 outcome of a matter. Here, the Respondent had nothing to lose/gain in advising the county
19 whether the hearing was legally proper. Regardless of who advised the county regarding the
20 hearing, the outcome would have been the same. The case law is clear that Deputy District
21 Attorneys are at-will employees¹ and thus, by law Kabell was not entitled to a hearing. Since he
22 had no stake in the outcome of the decision to have a hearing, the Respondent did not have a
23 conflict of interest, and as such, his actions clearly did not violate RPC 1.7.

24 Similarly, the Respondent did not violate RPC 8.4 by improperly influencing whether or
25 not Kabell got a hearing. The Respondent was not the one who actually prevented Kabell from
26

27 ¹*See Wayment v. Holmes*, 112 Nev. 232, 912 P.2d 816 (1996).

1 having a hearing, he merely advised the County that the hearing was not legally justified under
2 the statute. The statute which precludes at-will employees from receiving hearings was in place
3 long before the Respondent became District Attorney and the ultimate decision as to whether or
4 not to have the hearing was made by the Nye County Manager. There is no way that the
5 Respondent had any control over the implementation of a statute which pre-dated his candidacy
6 nor did he exert any control over the Nye County Manager or that office. As such, he cannot be
7 disciplined for violating RPC 8.4.

8
9 **V. CONCLUSION**

10 As no genuine issue of material fact exists in this case, the Respondent is entitled to
11 summary judgment as a matter of law. Here, the Complainant cannot prove there was a conflict
12 of interest let alone that the Respondent violated his ethical duties. Moreover, the Respondent is
13 entitled to immunity for his discretionary decisions as the District Attorney of Nye County. Thus,
14 this Honorable Court should enter a judgment in favor of the Respondent.

15 DATED this 5th day of June, 2020.

16 Respectfully submitted,

17 /s/ Thomas F. Pitaro
18 Thomas F. Pitaro, Esq.
19 Nevada Bar No. 1332

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

20 *Attorneys for Respondent*
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Exhibit A

CHRIS ARABIA
District Attorney



KIRK VITTO
Chief Deputy District Attorney
Criminal Division

MARLA ZLOTEK
Chief Deputy District Attorney
Civil Division

**OFFICE OF THE DISTRICT ATTORNEY
NYE COUNTY**

Tonopah Office
(775) 482-8166
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P.O. Box 39
Pahrump, Nevada 89041
Phone: (775) 751-7080
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Pahrump Office
1520 East Basin Avenue

October 11, 2019

Michael Vieta-Kabell
mvkabell@gmail.com

Dear Mr. Vieta-Kabell,

This is in response to your September 26, 2019 email (with a letter dated September 23). The following information is not intended to be all-inclusive but does provide in substantial part the primary reasons for your termination.

1. General Insubordination.

Throughout my tenure, you never accepted my leadership or your subordinate role. You were resistant to directives, acted as though you had authority that superseded mine, and showed a deficient appreciation of the fact that a deputy DA is supposed to function as an extension of or proxy for the DA, i.e. carry out the DA's policies and act in the best interests of the DA.

I had hoped to avoid the need to do write-ups and had hoped that your behavior would improve over time, but it did not.

I met with you in July of 2019 and urged you, among other things, to bear in mind that some of the changes I had made were made in part to give you a chance to demonstrate an ability and willingness to follow my directives and programs. You continued to fall short in this area, with respect to my case screening policy in particular.

On August 14, 2019, we had another meeting and I again stressed the need for you to follow the policies of this office. I restated that part of the reason for maintaining the new screening policy (which you clearly disagreed with) was to assess whether or not you were willing and able to follow the new directives. I had hoped that you would seize that opportunity to show the ability and willingness to abide.

The problems continued and I started writing you up out of frustration and in the hope that you would take advantage of the opportunity to show a basic willingness and ability to follow directives. It is worth noting that while you received four reprimands in the last month of your employment, I could have issued numerous reprimands in prior months (again, I was—perhaps naively—hoping that the issues would subside as the early stages of my term passed).

After the fourth reprimand (addressed in more detail in #3 below), I was thinking—again—about what I could do to get you on board when I realized that the chronic nature of the problem meant that it was irremediable.

2. Ethics, and in Deputy/Insubordination Context

When I was a defense lawyer, we opposed each other in two jury trials. In one of those (State v. Hamett), you committed an egregious breach of your ethical duties. When one of the alleged victims recanted, you told me simply that the alleged victim was no longer cooperating with the state. You then told the Judge that you had informed me of the recantation (I was able to refute that almost on the spot). The Judge assured me that there was no need for me to report the incident to anyone, so I did not.

While I realize that that was in 2012, the misconduct has always remained in the back of mind.

As a Deputy, you were in a position to sign documents in my name. Because of your persistent insubordination, unwillingness/inability to follow directives, lack of respect for my leadership, and apparent desire to be in charge, I was no longer comfortable with the idea of you signing legally significant documents on my behalf (for both ethical and practical reasons). Your actions in the August 16, 2019 hearing in State v. Wilson brought this issue into stark relief after I finally had a chance to review the transcript.

3. State v. Wilson, August 16, 2019 hearing

For that hearing, I gave clear instructions to make a record of the state's opposition to the continuance and to say nothing else. Beyond the readily apparent issues and complexities of the case, there are other factors at play that put the DA's office in a very difficult position.

Thus, I determined that the best course of action was to oppose the continuance and do nothing else, and to maintain a posture that would not be seen as pro- or anti- any particular attorney. I could not trust you with all of the details regarding the reasons for my decision, in no small part because I was concerned that you would pass the information along to opposing counsel (that I felt such a concern was a problem in and of itself).

At the hearing, you took it upon yourself to mention that the state was making a record of its opposition and then to speak at greater length and conviction about multiple reasons why a continuance was a good idea or at the very least not an ill-advised idea. You made several defense arguments that defense counsel had not made (for whatever reason). You fostered the impression that the DA's office was tacitly acquiescing to the continuance. Anyone who saw the hearing or reviewed the transcript could easily arrive at the conclusion that the DA's office was going out of its way to help defense counsel.

This impression could weaken any opposition to additional defense requests to continue and could cause problems for the DA's office and the County if the DA's office is seen as having aided defense counsel.

4. State v. Flood, Insubordination and Attempted Refusal to Prosecute

You violated policy by overruling the screener and deciding that a case required dismissal or withdrawals of charges because the suspect had not been questioned. When the screener requested a citation to authority for the proposition that an interview with the suspect was a required element of the charged offense (which went above and beyond as the screener could have simply overruled without explanation), you shifted gears and asserted that you did not believe that the defendant committed the offense. As my deputy, you had an obligation to follow my office's good-faith determination that prosecution was appropriate (this was not a situation where one could argue that the decision to prosecute was made in anything other than good faith).

5. Screening

When I reassigned all screening to two other deputies, you went the extra mile to disobey the new policy, engage in insubordination, and frustrate and subvert my reform efforts. You took cases from one of the screeners, overruled the screeners, circumvented the screening process, etc. Even after two meetings with me during which I stressed the importance of at least demonstrating that you could follow a new and specific policy, you continued (often passive-aggressively) to try to get around the policy and substitute your preferred procedure for mine.

6. Office Policy on PDs

On August 23, 2019, you invited Dan Martinez into the office during a time when you thought I was not in the office. This violated an unambiguous policy and was a gross display of insubordination in front of the administrative staff. Had I not caught it, it could also have led to other unnecessary problems.

7. Insubordination and Unwillingness to Do Job, Refusal of Civil Work

When one of your colleagues attempted to implement my directive to have you do some civil law assignments, you refused. You refused even though your job description very clearly includes possible civil law assignments. At the time, I was too overwhelmed with other management and personnel problems to respond sufficiently to this gross abrogation of your duties, but it did inform my later thinking with respect to your ongoing insubordination issues.

8. Attempted Insubordination in Presence of Most Colleagues

During a staff meeting, I announced that I was considering having a deputy DA attend CAC hearings. In front of all the other prosecutors, you declared that you would not do CAC hearings. While I corrected you right then and there, the incident was yet another example of your seeming belief that you were in charge of your own work assignments.

9. Feigned Misunderstanding/Mistake

You often failed to follow the rules or engaged in insubordination and then feigned mistake or misunderstanding. I did not chronicle these instances but it was a consistent refrain. The errors seemed to flow in the insubordinate direction and frankly it repeatedly strained credulity for you to suggest that a Michigan Law grad could be as limited in basic comprehension as you sometimes seemed to suggest that you were.

10. No Trust

My experiences with you during my term in office unfortunately led me to conclude that I could not sufficiently trust you in your role as one of my deputies to justify the continuation of your employment.

11. Insubordination with Passive-Aggressiveness and Respect Issues

Your insubordination, passive-aggressiveness, lack of respect, and repeated efforts to subvert and undermine my policies caused problems in the office. Besides setting a poor example, your attitude caused tension and unrest among staff. You were also a negative influence on at least one of your fellow DDAs. Multiple members of team expressed the opinion that your presence was frustrating efforts to accomplish the office's mission.

Since your departure, the atmosphere in the office has noticeably improved, there is less tension, and there has been a noticeable improvement in the attitude and performance of some of your former colleagues.

12. "At Will" Employee

You were an "at will" employee without due process and/or cause protections in the termination context (i.e. subject to termination with or without cause and at any time), as contemplated by NRS 252.070 and as confirmed by your sworn testimony in April of 2019. The office chose to exercise its right to terminate your employment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Arabia', with a stylized flourish at the end.

CHRIS ARABIA
Nye County District Attorney

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Exhibit B

**DECLARATION OF MARLA ZLOTEK, CHIEF DEPUTY DISTRICT ATTORNEY- CIVIL
NYE COUNTY DISTRICT ATTORNEY'S OFFICE**

I, MARLA ZLOTEK, declare under penalty of perjury that the foregoing is true and correct.

1. That I am employed as a Chief Deputy District Attorney for the Nye County District Attorney's office and I have been employed as an attorney in the DA's Office since 1995;
2. That on or about September 2019, former DDA M. Vietta-Kabel (hereinafter DDA) invoked/requested a hearing citing to Nye County Code 2.38.110 and the Nye County Personnel Policy Manual Section 11;
3. That on or about September 24, 2019, the DA received notification by email from the Nye County Human Resources Director that a hearing as requested by the DDA was set;
4. That upon receipt of the email, I, DDA Bradley Richardson, and the DA discussed the issue of whether DDA was entitled to the hearing that he (DDA Michael Vietta-Kabel) requested;
5. That the issues pertinent to the hearing request was discussed with DA Arabia for many hours over more than 1 day and involved numerous meetings, research, analysis and a thorough discussion of the issues involved with the request for a hearing;
6. That DDA(M. Vietta-Kabel) was appointed as a deputy district attorney approximately 10 years ago. DA Arabia terminated his employment thereby revoking his initial appointment pursuant to NRS 252.070.
7. That after much research, analysis and discussion, the DA sent an email to the Human Resources Director to cancel the hearing. The DA's email to cancel the hearing was sent to prevent "illegal action" from occurring by having the hearing for the DDA. Interestingly, the Nye County Human Resources Director did not request that the DA opine regarding the hearing. Rather, the email was sent notifying the DA that the hearing was already set;
8. That after extensive research, analysis and discussion, it was concluded that the DDA was not entitled to a termination hearing. To allow the hearing to proceed in light of the DDA not being legally entitled to a hearing, would be equal to condoning or turning a blind eye to illegal activity of the County;
9. That upon notice by the HR Director that a hearing was set and after concluding that the DDA was not entitled to the hearing, action was taken by the DA whereby he (DA) sent an email to the HR Director to cancel the hearing;
10. That legal arguments were discussed, weighed, and there was a good faith belief that the at-will DDA was not entitled to the hearing that was set by the Human Resource Director;
11. That it is my opinion that the decision was not taken lightly or without careful consideration;

12. That the following was discussed: Nye County Code, NCC 2. Is titled Merit Personnel System. The DDA invoked NCC 2.38.110 for requesting a hearing of the DA's decision to discharge/terminate the DDA. However, NCC 2.38.040 states:

Promulgation of Policies and Procedures

...

F. The Board thus hereby . . . to adopt personnel policies and procedures by administrative actions, subject to the advice and consent of the Board. . . . Such personnel policies and procedures as adopted shall be deemed to be not the making of new law, but instead to be the execution and implementation of the personnel system and policies provided for in this and other applicable ordinances.

13. That the BoCC adopted what is known as the Nye County Personnel Policy Manual ("PPM"). It has been revised many times over the years. The definition of "at will" employee states "At-Will: Employment status wherein the employee may be terminated at any time, with or without cause. An employee in an at-will status . . . and is not covered by the provisions of the discipline, layoff, or dispute resolution sections of these personnel policies.";

13. That Section 11 of the PPM is titled Disciplinary Actions and Appeals and Section 12 is titled Dispute Resolution. Section 12. Dispute Resolution clearly states that "termination of an at-will employee" is excluded from the Dispute Resolution provision;

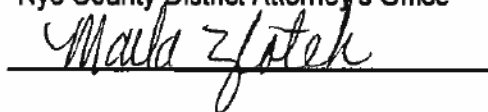
14. That the DDA testified at an EMRB hearing that he was an at-will employee. The DDA testified that the concerns for unionization was to have protection from outright termination;

15. That NRS 252.070 states: "(1) All district attorneys may appoint deputies . . . (3) All appointment of deputies must be in writing . . . be recorded in office of recorder . . . (6) In county whose population is 700,000 or more deputies governed by merit personnel systems;

16. That the Senate minutes (1993) regarding subsection 6 above contained testimony from Clark County official stating that there were almost 100 deputy DA's and that he would like to bring them into the merit program so that there was uniform hiring, discipline and discharge. Senator Raggio did not favor this policy. He stated that historically, the DA has the right to appoint or retain, upon election, the deputy DA's. Senator Raggio wondered and asked, "Why this was proposed?" His hunch was that if passed, it would prohibit a new DA of Clark County from appointing or removing DDA's. Mr. Graham stated that "smaller counties this would not be appropriate because those offices were run like a small law firm.";

Executed this 1st day of June, 2020.

Marla Zlotek, Chief Deputy District Attorney – Civil
Nye County District Attorney's Office



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Exhibit C

DECLARATION OF BRADLEY J. RICHARDSON, ESQ.

I, Bradley J. Richardson, make this Declaration under penalty of perjury under the laws of the State of Nevada and hereby declare as follows:

1. I am submitting this Declaration for consideration in the hearing on the grievance in Nevada State Bar Case No. OBC-20-1383.

2. I have personal knowledge of the following related facts and would be competent to testify to the facts as stated herein and would do so if requested. As to those matters stated on information and belief, I do believe them to be true to the best of my knowledge.

3. I can assure everyone that the attorneys advising the District Attorney about Mr. Vieta-Kabell's demand for a hearing had thoroughly researched the issue of whether Mr. Vieta-Kabell was an "at-will" employee and the issue of whether "at-will" employees were entitled to a hearing.

3. I was admitted to the Nevada State Bar in 1977 and admitted to the Kansas State Bar in 1978.

4. I have been employed as a Nye County Deputy District Attorney since August 28, 2017. Prior to that date, I was a partner at the law firm of Fennemore Craig in their Las Vegas, Nevada office. I am a Martindale-Hubbell AV Preeminent rated attorney. I was of a member of the State Bar of Nevada Standing Committee on Ethics and Professional Responsibility from approximately August 2008 to August 2017. I was chair of that committee for two years during that period. While serving on that committee, I had the great opportunity to be a regular speaker for the Nevada State Bar on the subject of professional ethics.

5. Significantly, on February 5, 2019, a litigation non-meeting took place in Tonopah before a regularly scheduled Board of County Commission meeting. Marc Ricciardi, the attorney hired by the County to advise the County regarding the litigation with the DDA's, was present by telephone. District Attorney Chris Arabia and I were present in person. Chief Deputy District Attorney Marla Zlotek appeared by telephone. D.A. Chris Arabia explained to the Commissioners that the DDA's were at-will employees and would not likely succeed in the EMRB litigation. Marc Ricciardi participated in the discussion of this matter. The County Commissioners tabled the agenda

1 item to approve a settlement agreement. It must be noted that, subsequently, the DDA's lost their
2 EMRB case.

3 6. A day later, on February 6, 2019, Mr. Ricciardi informed County Manager Tim
4 Sutton that he would not be further representing the County in the EMRB action.

5 7. On February 6, 2019 Ricciardi forwarded to me the memo dated March 10, 2018
6 which he sent County Manager Tim Sutton informing Mr. Sutton of the County's likelihood of
7 success. See **Exhibit 1** attached. As far as I know, the memo was never shared with the DA's office
8 until Mark Ricciardi sent it to me. The memo is significant, in part, because the memo informs the
9 County Manager that Mr. Ricciardi shares then District Attorney Angela Bello's opinion that NRS
10 252.070 controlled the issue of whether the DDA's could obtain a "for cause" termination benefit
11 and that this benefit was not likely available to the DDA's per the statute.

12 8. On February 19, 2019 the BoCC approved Nick Crosby being retained by as counsel
13 in the NCMEA case.

14 9. I believe it is significant that Chris Arabia, Marla Zlotek and I had a conference call
15 with attorney Rebecca Bruch on or about March 21, 2019. We sought her advice on dealing with
16 questions related to the handling of employment issues with the Nye County Deputy District
17 Attorneys who were handling criminal matters. Ms. Bruch told the three of us that she could only
18 advise the County and its Commissioners regarding these issues and therefore she could not advise
19 the District Attorney's office about this topic. I am informed and therefore believe that Ms. Bruch
20 did consult with the County Manager about the DDA litigation.

21 10. In March of 2019, I contacted former Clark County Chief Deputy District Attorney
22 Ben Graham. He and I had worked together when I was employed by the Clark County District
23 Attorney between the years 1979 to 1981. Mr. Graham explained how it was necessary to obtain
24 legislation to achieve a "for cause termination" benefit for DDA's.

25 11. Mr. Graham said that he was requested in early 1993, by District Attorney Rex Bell,
26 to seek an amendment to NRS 252.070 to provide a "for cause termination" benefit for the Clark
27 County Deputy District Attorneys. Mr. Graham said that the legislature was already in session when
28 he received this request. Mr. Graham was employed by the Clark County District Attorney and also

1 lobbied for Clark County matters while the legislature was in session. Mr. Graham confirmed the
2 details of the legislative meeting minutes of 1993 and advised me that it required legislative action
3 for the Nye County District Attorneys to obtain such a benefit. Mr. Graham and attorney Matt
4 Callister (who was a Nevada state senator at that time) got the legislation passed over William
5 Raggio's opposition. Mr. Raggio was a former Washoe County District Attorney.

6 12. I was present at the EMRB hearing on April 9, 2019 and listened to Michael Vieta-
7 Kabell's testimony. It was apparent that he believed the only way he could obtain a "for cause"
8 termination benefit was to be accreted into the existing NCMEA union whose members already had
9 that benefit. It was apparent to me at the conclusion of the hearing that the EMRB was not likely to
10 grant the DDA's request to accrete into the NCMEA union and the DDA's would be denied the "for
11 cause termination" benefit they were seeking. This turned out to be the ruling of the EMRB.

12 13. I am informed and therefore believe that there was a Litigation meeting during an
13 intermission from the BoCC regular meeting in Tonopah on May 7, 2019. I am informed and
14 therefore believe that at that closed meeting, Becky Bruch addressed the County Commissioners
15 about the EMRB litigation. Tim Sutton, the County Manager was also in attendance. I am also
16 informed and therefore believe that Ms. Bruch stated that the Commissioners should settle the
17 EMRB case even though the EMRB hearing had already taken place. I, along with attorney Nick
18 Crosby (who represented the DAs office at the hearing), thought it had gone well for the County
19 and that a decision from the EMRB was expected by early June. The important thing about this
20 meeting is it demonstrates that outside counsel Becky Bruch, was providing advice to the
21 Commissioners on the employment issues with the DDA's. It also shows that, despite the fact that
22 we believed that the hearing went well, the County Manager and outside counsel seemed to be
23 pushing to settle the matter in a manner adverse to the DA's office.

24 14. In July of 2019, Rebecca Bruch acknowledged to myself and Marla Zlotek that she
25 was reviewing a records request from Ronni Boskovich's father, Ron Boskovich, (which request
26 was related to Boskovich's EMRB action) on behalf of Nye County. Ms. Bruch also acknowledged
27 that she had been provided copies of my emails (unbeknownst to me) concerning Ms. Boskovich
28

1 and the EMRB case. Again, it appeared that Ms. Bruch was advising the County about the labor
2 dispute with the DDA's.

3 15. After Mr. Vieta-Kabell made his request for a hearing under the Nye County Code
4 and the County Personal Policy Manual, Ms. Zlotek and I looked at County Personal Policy Manual
5 and determined that there was no provision for an at-will employee, as a matter of law, to receive
6 such a hearing. In fact, Section 12 of the County Personal Policy Manual, titled Dispute Resolution,
7 clearly states that "termination of an at-will employee" is excluded from the Dispute Resolution
8 provision. We believed that it was our obligation to so inform the County Manager of our opinion
9 and we believed we were entitled to so inform the County Manager.

10 Dated this 30th day of March, 2020.


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12 BRADLEY J. RICHARDSON, ESQ.
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Exhibit 1 to Declaration of Bradley J. Richardson

Exhibit 1 to Declaration of Bradley J. Richardson



CONFIDENTIAL ATTORNEY CLIENT PRIVILEGE

MEMORANDUM

To: Tim Sutton
From: Mark J. Riccardi
Date: March 10, 2018
Subject: Deputy District Attorneys Demand for Recognition
Client/Matter: 20596.0002

I have carefully reviewed Angela Bello's email of March 7 and I have also reviewed several of the relevant statutes and EMRB cases and the Clark and Washoe CBAs that cover Deputy District Attorneys, (DDAs).

Angela is correct that under NRS 288.170 the primary criteria for the EMRB's bargaining unit determination is whether there is a community of interest among the employees concerned. The union's argument is that the DDAs have a sufficient community of interest with the other County management employees represented by the NCMEA. The County certainly has the ability to disagree. We should be entitled to a hearing before the EMRB on the community of interest issue.

One big factor in the community of interest analysis is whether there is a similarity of wages and benefits. I believe (but I am not certain) that the wage scale and benefits of the DDAs are the same or substantially similar to the NCMEA employees. If that is true that certainly weighs in favor of a finding of community of interest between the two groups. However, there is much more to the community of interest analysis. The EMRB considers, among other things, similarities in duties, skills, working conditions, job classifications, the amount of interchange or transfer of employees, integration of an employer's operations, supervision of employees, geographic proximity, common objectives in providing services, personnel policy, frequency of contact among employees and the desires of affected employees.

Note that if the EMRB finds that there is a community of interest between the new group and an existing "wall-to-wall" unit, the EMRB generally favors the larger wall-to-wall unit to minimize the practical difficulties on a local government employer that results from a proliferation of bargaining units and as a safeguard for employees against diluted effectiveness caused by smaller and fragmented bargaining units.

Fisher & Phillips LLP

Atlanta • Baltimore • Boston • Charlotte • Chicago • Cleveland • Columbia • Columbus • Dallas • Denver • Fort Lauderdale • Galtport • Houston
Irvine • Kansas City • Las Vegas • Los Angeles • Louisville • Memphis • New Jersey • New Orleans • New York • Orlando • Philadelphia
Phoenix • Portland • Sacramento • San Diego • San Francisco • Seattle • Tampa • Washington, DC

Memo to Tim Sutton
Re: Deputy District Attorneys Demand for Recognition
March 10, 2018
Page 2

Of course the EMRB, like any tribunal, can weigh the factors in a manner that allows it to back into whatever conclusion it really wants to come to. Attached are two examples of the way the EMRB handles the analysis (Truckee Meadows and Nye County JPOs).

I think here we could make a good case that there is not a community of interest between the DDAs and the NCMEA employees. This would be a new bargaining unit and the County would be justified in bargaining hard on the first CBA—why should the DDAs get same contract as those who have benefitted from the long term bargaining relationship between the County and the current management employees.

Here is why I did not originally suggest a fight over the bargaining unit: if we don't bargain hard and ultimately a CBA for the DDAs would end up looking very much like the NCMEA agreement, why would the County wish use resources to fight for a separate unit and then if successful use resources to negotiate separately with another group during each bargaining cycle.

However I completely see Angela's point that her operation is very different from other County departments. There are statutes very specifically relating to her duties and the way she must appoint deputies—see 252.070 attached. Also note that the Attorney General has certain supervisory authority over the DA—see NRS 228.120 attached. It is also true that I know of no other DDA group that has been lumped into a general County bargaining unit.

I suppose the ultimate decision is up to you and the Commission. Disagreements between the Commission and DA likely come up from time to time but the Commission must choose its battles and I don't know if this one is worth fighting with Angela. I am happy to argue that the DDAs should be a separate bargaining unit and take it to an EMRB proceeding if necessary. Then during bargaining we can certainly be as tough as the County wants to be in negotiating a first CBA. It might be worth showing these DDAs that if they really want to fight to be part of the NCMEA bargaining unit, the six of them (or possibly the entire NCMEA membership if they cared enough), would need to pay attorney Levine's legal fees to take this to the EMRB. Perhaps when they consider the expense they will back down and simply bargain a separate agreement for the DDAs.

The other issue is whether the DDAs could really negotiate a just cause provision. It may be that we could make a legal argument pursuant to NRS 252.070 that the DA should have the unfettered right to revoke an appointment. However even Angela seems to agree that the issue is not currently before us.

I am happy to discuss whenever you are ready.

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Exhibit D

APPEAL OF DISMISSAL

TO: DANELLE SHAMRELL, NYE COUNTY HUMAN RESOURCES
FROM: MICHAEL VIETA-KABELL
SUBJECT: APPEAL OF TERMINATION
DATE: SEPTEMBER 23, 2019
CC: TIMOTHY SUTTON, CHRISTOPHER ARABIA, RYANNE GOTT

Pursuant to Nye County Code Chapter 2.38 and the Nye County Personnel Policy Manual I am hereby filing the instant appeal of my dismissal as an employee, said dismissal having occurred on September 18th or 2019.

1. Authority for appeal.

Nye County Code 2.38.010 defines Disciplinary Action as, "An action such as ... discharge from employment ... and which has been or may be imposed on an employee by an elected official for whom the employee is assigned to work. Pursuant to Nye County Code 2.38.110(F), "The personnel policies shall provide for appeals of disciplinary actions. In the case of a termination of employment, the appeal shall be to an individual other than the person making the disciplinary decision"

The Nye County Personnel Policy Manual Section 11.1.3(5) sets forth the process for appealing a disciplinary decision. Pursuant to that section, "The affected employee may appeal the disciplinary action to the County Manager by filing a written appeal with the Human Resource Director within five (5) work days of the effective date of the disciplinary action."

Certain classes of employees defined as "non-competitive" are exempted from the ability to appeal under NCC Chapter 28 and consequently NCPPM Section 11.1.3. However, Appellant does not fall into any of the exempted classes set forth in NCC 28.38.030(b) & (c). Furthermore, under Appellant's executed Formal Offer of Employment, attached hereto as Exhibit 1, it specifically states under subsection 2, that Appellant, "will not be entitled to overtime compensation or compensatory time; however, [Appellant] will be entitled to any other benefit provisions as explained in the Nye County Personnel Policy Manual. Appellant's Formal Offer of Employment also states under subsection 3 that, "During the probationary period [Appellant is] an "at will" employee." As a ten year employee, Appellant is no longer within his probationary period, and therefore, is no longer an "at will employee." Additionally, nothing in Appellant's formal accepted offer of employment defines his position as "non-competitive."

Based on the authority of the Nye County Code and Nye County Personnel Policy Manual as set forth above, as well as the specific terms of Appellant's accepted Formal Offer of Employment, Appellant hereby appeals his dismissal.

2. Request for hearing.

NCPPM section 11.1.3(5)(b) states, "After an employee has submitted a timely appeal to the County Manager, the Human Resource Director will set a date for a disciplinary appeal hearing." Therefore, Appellant hereby requests that a disciplinary appeal hearing be held promptly.

3. Basis for appeal

I. Facts

Appellant has been a Deputy District Attorney for Nye County for over ten years under four District Attorneys. Until working for the current District Attorney, Appellant has never been subjected to any disciplinary action. Appellant's hard work and service to Nye County has allowed him to progress to the top of the pay scale for his classification, allowing him to secure food, clothing, shelter, and security for his family. Furthermore, in 2019 Appellant transferred his children to his employer provided health insurance and by doing so successfully secured in-home applied behavioral analysis therapy for Appellant's developmentally disabled and autistic son, which Appellant had been unsuccessful in securing through his wife's health insurance despite years of efforts.

On September 18, 2019 at approximately 3:00 p.m. District Attorney Christopher Arabia dismissed Appellant from employment. At that time Appellant asked why he was being dismissed and DA Arabia declined to provide any reason. Prior to being dismissed from employment Appellant received no notice, written or otherwise, of the proposed dismissal from employment.

II. Argument

a. Denial of Due Process

The actions of DA Arabia were an egregious violation of the appellant's right to due process in termination. The Nye County Code and the Nye County Personnel Policy Manual afford Nye County employees such as Appellant due process in termination. Pursuant to NCPPM 11.1.3:

Prior to taking disciplinary action involving suspension, reduction in pay, demotion, or termination against any regular employee, Nye County will take action intended to ensure that the employee is afforded due process. Due process in regard to employment-related disciplinary action includes, among other actions, making certain the employee is provided notice of the reason for the disciplinary action and is given the opportunity to provide a response to the proposed disciplinary action prior to an appropriate supervisor making a final decision regarding the disciplinary action.

According to NCC 2.38.110, "Prior to final decision to dismiss or suspend any employee, the person responsible for such decision shall offer to meet with the employee and to listen to his or her point of view as to the reasons for such possible discharge." Furthermore, pursuant to NCPPM 11.1.3(1):

In situations where the proposed disciplinary action involves a suspension, a reduction in pay, a demotion, and/or termination, written notice of the proposed disciplinary action will be hand-delivered or sent certified mail to the employee. The notice will include the following information:

- a. The nature of the disciplinary action proposed;
- b. The effective date of the proposed disciplinary action;
- c. A statement of the proposed disciplinary action with documentation, statements, and/or other evidence supporting the proposed disciplinary action;
- d. A statement advising the employee of his/her right to file a written response, or to submit a written request for a pre-disciplinary conference with the Human Resource Director, within five (5) work days of receipt of the notice of proposed disciplinary action; and
- e. A statement that the employee's failure to file a written response or request a pre-disciplinary conference in a timely manner, or to appear at the pre-disciplinary conference after requesting such, will constitute a forfeiture of the employee's rights to any further appeal.

NCPPM 11.1.3(2) affords employees subject to pending discipline the right to review evidence against them. NCPPM 11.1.3(3) affords employees the right to request a pre-disciplinary conference with the opportunity to present evidence in the employee's favor.

In the instant case because the right to due process in notice under NCPPM 11.1.3(1) was not followed by DA Arabia none of the other due process rights ensured by NCC or NCPPM were available to Appellant. By blindsiding Appellant with his dismissal and failing to provide any justification Appellant was unable to take advantage of any of the administrative procedures and protections to which he is entitled.

b. The dismissal was without cause

As stated supra, Appellant was not provided any reason for his dismissal either prior to or subsequent to DA Arabia taking said disciplinary action. Therefore, said Appellant's dismissal was presumptively unjustified.

NCPPM 11.1.1 requires justification prior to taking disciplinary action against an employee.

In the event that District Attorney Arabia supplements the record to suggest that justification existed for the Appellant's dismissal, Appellant points out that the due process clauses mentioned above are rendered moot when justification is provided after the fact. The intention of rules in due process is to afford Appellant an opportunity to address allegations prior to suffering damage in the form of the loss of his job, financial loss, loss of opportunity to more effectively mitigate severe long-term disability for his dependent child, etc.

III. Conclusion

The action taken by District Attorney Arabia in dismissing Appellant constitutes a clear violation of Appellant's due process rights under the Nye County Code and Nye County Personnel Policy manual. Because of this denial of due process rights Appellant has clearly suffered damage and will likely suffer further damage both monetary and otherwise if the matter of Appellant's dismissal is not addressed promptly. Therefore, Appellant is requesting a prompt hearing on the matter of his dismissal pursuant to the authority cited herein.

Signed September 23, 2019,


Michael Vieta-Kabell

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Exhibit E

Christopher R. Arabia

From: Christopher R. Arabia
Sent: Tuesday, September 24, 2019 4:42 PM
To: Danelle Shamrell
Cc: Timothy Sutton
Subject: Vieta-Kabell

Danelle,

It is my legal opinion as the Nye County District Attorney that you must cease and desist from conducting the proposed hearing.

The proposed hearing is improper under NRS 252.070. Mr. Vieta-Kabell was an at-will employee appointed (as opposed to hired) by the District Attorney's Office and terminable at any time with or without cause. See NRS 252.070, Nye County Board of County Commissioners Resolution 95-022, and Nye County Policies and Procedures Manual Rev. 5-2017 at p. 141 ("at will" defined). As such, I have the right to revoke Mr. Vieta-Kabell's appointment. See NRS 252.070.

Earlier this year, Mr. Vieta-Kabell asserted under oath that he was an "at will" employee when he gave sworn testimony that his position as Deputy DA did not afford him due process protections against termination of employment. Now he is contradicting his own prior sworn testimony and falsely claiming that he did have such protections.

Please confirm via e-mail no later than 4:00 p.m. on Thursday, September 26, 2019 that you have vacated the proposed hearing regarding Mr. Vieta-Kabell.

Sincerely,

CHRIS ARABIA
NYE COUNTY DISTRICT ATTORNEY
crarabia@co.nye.nv.us
Pahrump Office: 1520 E. Basin Avenue
Pahrump, Nevada 89060
Phone: 775-751-7080
Fax: 775-751-4229
Tonopah Office: 101 Radar Road
Tonopah, Nevada 89049
Phone: 775-482-8166
Fax: 775-482-8175

NYE COUNTY DISTRICT ATTORNEY COMMUNICATION

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Exhibit F

Day 1
Nye County Management Employees Association vs Nye County

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STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD
NYE COUNTY MANAGEMENT EMPLOYEES
ASSOCIATION,
Complainant/Employee, Case No. 2018-012
vs.
NYE COUNTY,
Respondent/Employer.

TRANSCRIPT OF PROCEEDINGS
DAY 1
Taken on April 9, 2019
at 8:39 A.M.
at 3300 West Sahara Avenue, Fourth Floor, Tahoe Room
Las Vegas, Nevada
Reported by: Marcia Leonard, CCR 204

Day 1
 NYE County Management Employees Association vs Nye County

2..5

page 2		page 4	
1	A P P E A R A N C E S	1	MICHAEL VISTA-KABELL
2	The Panel:	2	Direct Examination by Mr. Levine
3	Brent Eckersley, Chairman	3	Cross-Examination by Mr. Crosby
4	Sandra Masters, Vice Chairman	4	Redirect Examination by Mr. Levine
5	Gary Cottino, Board Member	5	Recross-Examination by Mr. Crosby
6	For the Complainant/Employer:	6	Further Redirect Examination by Mr. Levine
7	Adam Levine, Esq.	7	Further Redirect Examination by Mr. Levine
8	Law Offices of Daniel Marks	8	Further Recross-Examination by Mr. Crosby
9	610 South Ninth Street	9	DARRIN TUCK (Recalled)
10	Las Vegas, Nevada 89101	10	Direct Examination by Mr. Levine
11	702.386.6536	11	Cross-Examination by Mr. Crosby
12	702.386.6812 Fax	12	Redirect Examination by Mr. Levine
13	alevine@danmarks.net	13	
14	For the Respondent/Employer:	14	
15	Nicholas D. Crosby, Esq.	15	
16	Marquis Aurbach Coffing	16	
17	10001 Park Run Drive	17	
18	Las Vegas, Nevada 89145	18	
19	702.842.2133	19	
20	702.856.8932 Fax	20	
21	ncrosby@macclaw.com	21	
22	Also Present:	22	
23	Donald Bordelove, Deputy Attorney General	23	
24	Bruce K. Snyder, Commissioner	24	
25	Darrin Tuck, Union Representative	25	
	Brad Richardson, Esq., Deputy District Attorney		
page 3		page 5	
1	I N D E X	1	LAS VEGAS, NEVADA, APRIL 9, 2019
2		2	8:39 A.M.
3	DARRIN TUCK	3	-ooo-
4	Direct Examination by Mr. Levine	4	
5	Cross-Examination by Mr. Crosby	5	CHAIRMAN ECKERSLEY: Let's go ahead and
6	Redirect Examination by Mr. Levine	6	reconvene the Employee-Management Board meeting,
7	Recross-Examination by Mr. Crosby	7	April 9th, Item 8, Case 2018-012, Nye County Management
8	PATRICK FERGUSON	8	Employees Association versus Nye County.
9	Direct Examination by Mr. Levine	9	Welcome, everyone. I've got a full room today,
10	Cross-Examination by Mr. Crosby	10	which is sometimes a good sign and sometimes a bad sign.
11	Redirect Examination by Mr. Levine	11	But we'll go ahead and just begin with introductions. It
12	DANIEL YOUNG	12	will help the court reporter as well.
13	Direct Examination by Mr. Levine	13	Kind of go to my left. I'm Brent Eckersley,
14	Cross-Examination by Mr. Crosby	14	Chairman.
15	Redirect Examination by Mr. Levine	15	MS. MASTERS: Sandra Masters, Vice-chairman.
16	Recross-Examination by Mr. Crosby	16	MR. COTTINO: Gary Cottino, Member.
17	Further Redirect Examination by Mr. Levine	17	MR. LEVINE: Adam Levine, General Counsel for
18	MOMMI MOSKOVICH	18	the MCHRA.
19	Direct Examination by Mr. Levine	19	MR. CROSBY: Mick Crosby, Counsel for Nye
20	Cross-Examination by Mr. Crosby	20	County.
21	///	21	COMMISSIONER SNYDER: Bruce Snyder,
22	///	22	Commissioner for the MCHRA.
23	///	23	MR. BORDELOVE: Donald Bordelove, Board
24	///	24	Counsel.
25	///	25	CHAIRMAN ECKERSLEY: Sir, go ahead in the back

<p>page 94</p> <p>1 community of interest exists?</p> <p>2 A. No.</p> <p>3 Q. Okay. So if you look in the binder in front of</p> <p>4 you, there is, Exhibit 2 is the Collective Bargaining</p> <p>5 Agreement. If you could turn to page four for me.</p> <p>6 Paragraph four on page four has subparagraphs A</p> <p>7 through U, which these are the classifications that are</p> <p>8 covered by the NCMEA Collective Bargaining Agreement,</p> <p>9 right?</p> <p>10 A. Uh-huh, yes.</p> <p>11 Q. Looking at those classifications, can you tell</p> <p>12 me do you work on a consistent basis with any of the</p> <p>13 employees in those classifications?</p> <p>14 A. No.</p> <p>15 Q. Do you have frequent and direct interaction</p> <p>16 with any of the classifications identified in that</p> <p>17 document?</p> <p>18 A. No.</p> <p>19 Q. Do you work side by side with any employees in</p> <p>20 those classifications?</p> <p>21 A. No.</p> <p>22 Q. Do you work together with any employees in</p> <p>23 those classifications to fulfill any joint obligation to</p> <p>24 the County?</p> <p>25 A. No.</p>	<p>page 95</p> <p>1 This was the deputy district attorney job description,</p> <p>2 the one that you signed and received back on Exhibit 20.</p> <p>3 If you turn the page to what's the second page of the</p> <p>4 actual job description, under work direction, lead, and</p> <p>5 supervisor responsibility, what is listed as your</p> <p>6 responsibilities in that capacity?</p> <p>7 A. It says not applicable.</p> <p>8 Q. You're not a supervisor of anybody, correct?</p> <p>9 MR. LEVINE: Objection. That calls for a legal</p> <p>10 conclusion under 288.075(a).</p> <p>11 BY MR. CROSBY:</p> <p>12 Q. Do you believe you are a supervisor?</p> <p>13 A. Not a direct supervisor.</p> <p>14 Q. Do you have the right to fire anybody?</p> <p>15 A. No.</p> <p>16 Q. And you report directly to the District</p> <p>17 Attorney, correct?</p> <p>18 A. I do.</p> <p>19 Q. You don't report to the County Manager?</p> <p>20 A. Correct.</p> <p>21 Q. Okay.</p> <p>22 MR. CROSBY: Nothing further, Miss Boskovich.</p> <p>23 Thank you.</p> <p>24 MR. LEVINE: Nothing further from me.</p> <p>25 CHAIRMAN ECKERSLEY: Questions of the Board?</p>
<p>page 95</p> <p>1 Q. And looking at those classifications on</p> <p>2 paragraph, in paragraph four, can you identify any roles</p> <p>3 that you share in the performance of your duties?</p> <p>4 A. No.</p> <p>5 Q. Do you know if any of those classifications</p> <p>6 require a juris doctorate degree?</p> <p>7 A. They don't to my knowledge.</p> <p>8 Q. And none of them require a law license either?</p> <p>9 A. Correct.</p> <p>10 Q. And your job does require those?</p> <p>11 A. Correct.</p> <p>12 Q. That degree and that license, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Do you work out in the field alongside any of</p> <p>15 the employees in those classifications?</p> <p>16 A. No.</p> <p>17 Q. Exhibit 12 is, if you turn to that for me.</p> <p>18 This is the, if you turn to the second page. This is the</p> <p>19 job description for deputy district attorney.</p> <p>20 For the record, page one states the last time</p> <p>21 this was accessed on the Nye County website, which is</p> <p>22 April 2, 2019. Despite the January 19, 1993, footnote,</p> <p>23 it's the current job description that appears on the Nye</p> <p>24 County website.</p> <p>25 Second page. Sorry. That was for the court.</p>	<p>page 97</p> <p>1 MR. COTTINO: No questions.</p> <p>2 CHAIRMAN ECKERSLEY: Thank you for your</p> <p>3 testimony.</p> <p>4 (Recess.)</p> <p>5 CHAIRMAN ECKERSLEY: The court reporter will</p> <p>6 swear you in.</p> <p>7</p> <p>8 MICHAEL VIETA-KABELL,</p> <p>9 having been first duly sworn to testify to the truth, the</p> <p>10 whole truth, and nothing but the truth, testified as</p> <p>11 follows:</p> <p>12</p> <p>13 DIRECT EXAMINATION</p> <p>14 BY MR. LEVINE:</p> <p>15 Q. Can you state your name for the record and spell</p> <p>16 it, please.</p> <p>17 A. My name is Michael Vieta-Kabell. That's</p> <p>18 M-I-C-H-A-E-L, V-I-E-T-A, hyphen, K-A-B-E-L-L.</p> <p>19 Q. And, Michael, where are you currently employed?</p> <p>20 A. At the Nye County Office of the District</p> <p>21 Attorney.</p> <p>22 Q. In what capacity?</p> <p>23 A. I'm a prosecutor.</p> <p>24 Q. And how long have you been a prosecutor?</p> <p>25 A. I'll be at 10 years on May 19th.</p>

<p style="text-align: right;">page 98</p> <p>1 Q. Were all 10 years with the Nye County DA's 2 Office? 3 A. Yes. 4 Q. And during those 10 years, have you ever done 5 any civil? 6 A. No. 7 Q. Michael, if I could have you turn to Exhibit 3. 8 And particularly page two, which is the February 6th 9 recognition letter. 10 Do you recognize that? 11 A. Yes. 12 Q. Okay. And who sort of was, for lack of a 13 better term, the ringleader who went around to get the 14 signatures on this document? 15 A. That was me. 16 Q. There is a signature by a Katrina Samuels. 17 Do you see that? 18 A. Yes. 19 Q. Is she still employed at the Nye County DA's 20 Office? 21 A. No, she's not. 22 Q. Where did she go? 23 A. She went to the Attorney General's Office. 24 Q. All right. Now, if we turn to Exhibit 4. If 25 you compare Exhibit 3 and Exhibit 4, there was a</p>	<p style="text-align: right;">page 100</p> <p>1 Q. Can you, could you be in the NCEA, which is 2 what I usually refer to as like the blue collar 3 bargaining unit? 4 A. No. 5 Q. Why? 6 A. It would be a logistical nightmare. They have 7 overtime. I'm an exempt employee. They're all hourly 8 employees, and I've glanced briefly at what sort of 9 things they have in their Collective Bargaining 10 Agreements and, you know, I just wouldn't fit. 11 Q. For example, do they get overtime? 12 A. They do. 13 Q. Standby pay? 14 A. Yes. 15 Q. As an attorney, are you overtime eligible? 16 A. No. I'm an exempt employee, so I just get paid 17 what I get paid, whether I'm there a hundred hours a week 18 or 39. 19 Q. I would like to talk about the issue of 20 community of interest. 21 A. Okay. 22 Q. But before I do. Well, in fact this is part of 23 community of interest. Let me have you turn to 24 Exhibit 9. 25 Are you familiar with Exhibit 9?</p>
<p style="text-align: right;">page 99</p> <p>1 signature line for a John Friel. 2 Is he still employed at the DA's Office? 3 A. He's not. 4 Q. Okay. Did somebody get assigned to the 5 criminal division who signed in his place, on Exhibit 4 6 at the bottom? 7 A. The bottom. Oh, it wasn't that Kirk Vitto was 8 assigned to the criminal division. He's been the chief 9 criminal deputy since long before I started there, but I 10 could see here on this that Mr. Vitto signed on that line 11 and scratched out Mr. Friel's name. 12 Q. Okay. And just so we're clear, is Mr. Vitto 13 going to be -- where is Mr. Vitto right now? 14 A. Hopefully, he's on the road. He had an 8:30 15 calendar, a 9:00 calendar in Pahrump, and stated to me 16 earlier that he was going to drive down here when he was 17 done with that. 18 Q. Okay. Michael, it has been stipulated that 19 there are four bargaining units in Nye County. NCEA, 20 NCMEA, NCLEA and NCASS. 21 Are you eligible to be in the NCLEA or NCASS? 22 A. No. 23 Q. Why? 24 A. Those are peace officer unions and, yeah, we're 25 not allowed to be in the same union.</p>	<p style="text-align: right;">page 101</p> <p>1 A. Yes. 2 Q. Did you send this to me? 3 A. Yes. 4 Q. Where did you obtain this? 5 A. If I remember correctly, I got it right off the 6 County website. 7 Q. And this indicates it's Nye County Management 8 Employees Pay Scale, correct? 9 A. Correct. 10 Q. If we take a look at, in the grades that are 11 part of the pay scale for the NCMEA, do you fall under 12 this? 13 A. I fall under a non-represented classification 14 in Grade 21 as a deputy district attorney. 15 Q. Right. So if we take a look at Grade 21, it 16 lists deputy district attorney, director of 17 administrative services, and director of human resources? 18 A. Yes, and that's me. 19 Q. All right. Now, in addition to sharing the pay 20 scale and being listed on the pay scale for the NCMEA 21 employees, are you familiar with their contract and their 22 benefits? 23 A. Yes. 24 Q. Do you get the same benefits that they do? 25 A. Yes.</p>

page 102

1 Q. Do you accrue overtime at the same rate?
2 A. Not overtime.
3 Q. Pardon me. I meant annual leave, sorry. Do
4 you accrue annual leave at the same rate?
5 A. Yeah, annual leave. Sick leave. I get
6 longevity based on that contract, yes.
7 Q. Do you believe that there is a community of
8 interest with the NCMEA that is stronger than any other
9 bargaining unit?
10 A. Yes, absolutely.
11 Q. Can you explain why?
12 A. I've been working with Nye County for, you
13 know, 10 years, and I like to, you know, know how I'm
14 getting compensated. You know, one of the primary aims
15 of pretty much any Collective Bargaining Agreement is how
16 are these people getting paid, so I familiarized myself
17 with that. I've always been governed by their pay scale.
18 I've also, ever since I have worked there,
19 been, you know, graded out on that pay school and
20 received compensation based on that. I have a
21 longstanding expectation that that's how I'm getting
22 compensated for doing that work.
23 You know, in addition, these are people that I
24 don't see directly in my office, but like Brad,
25 Mr. Adams, you know, he'll stop by every once in a while

page 103

1 or, you know, occasionally when I'm out doing other
2 things in the County, you know, case-related stuff, maybe
3 going and getting a GIS map for an exhibit for criminal
4 prosecution, I might run across somebody like Mr. Tuck.
5 And these are people who have been dealing with
6 the County, dealing with these same issues of how we get
7 compensated and how we get treated, you know, for similar
8 lengths of time, and they understand the same way I do
9 how the County works and, you know, what the County, how
10 it operates. How it, you know, how it acts towards us.
11 How it treats us.
12 So to me it makes sense to collectively bargain
13 with the NCMEA because essentially I've been free riding
14 on them for 10 years, you know. It's a good arrangement.
15 Not the free riding part of it, but it seems like it's
16 been an appropriate contract, and it's compensated me
17 appropriately, not just monetarily, but with my leave
18 accrual, with my benefits for 10 years. And I don't see
19 why I should break from that.
20 I simply would like to enjoy some of the
21 benefits of being a represented classification like due
22 process in termination. You know, it's basically the
23 wheel's not broke. I don't want to fix it. I just want
24 to be part of it. Up closer, you know, more deeply
25 entrenched part of it than I have been previously.

page 104

1 Q. Notwithstanding the fact that Nye County has
2 failed to formally recognize the NCMEA as your bargaining
3 representative for over a year, are the prosecutors
4 actually voluntarily paying dues to the NCMEA right now?
5 A. Yes. I don't know if every single one of them
6 is. I know that myself, Miss Boskovich, Mr. Young, and
7 Mr. Ferguson, I have personally seen them hand over
8 checks to the NCMEA for dues.
9 Q. Let's talk about the one name you didn't
10 mention there, Christi Kindel. You recognize Christi's
11 signature on Exhibit 3?
12 A. Yes. I'll turn to it, but I have reviewed it,
13 and yes, I know her signature and I know it's affixed to
14 Exhibit 3.
15 Q. At the time that the prosecutors requested
16 representation, was she assigned to the, assigned as a
17 criminal prosecutor?
18 A. Yeah, yes.
19 Q. Did something change after recognition was
20 requested but while it was being, for lack of a better
21 term, stalled?
22 A. She was reassigned to the civil division.
23 Q. And when did that occur?
24 A. It occurred sometime I believe in January of
25 this year.

page 105

1 Q. Okay. Just very recently?
2 A. Yes.
3 Q. Okay. Is she the only one that you know of who
4 is not paying dues?
5 A. Yes. Well, and I don't know that she's not
6 paying dues, but I don't have any reason to believe she
7 is.
8 Q. Okay. We're going to call Miss Kindel
9 tomorrow, but let me ask you, is there any deputy
10 criminal DA, either that was assigned as a criminal DA at
11 the time recognition was requested or is assigned now,
12 that you're aware of who does not want to organize and be
13 represented by the NCMEA?
14 A. No.
15 Q. Is it unanimous?
16 A. Yes.
17 MR. LEVINE: I'll pass the witness.
18
19 CROSS-EXAMINATION
20 BY MR. CROSBY:
21 Q. Good morning.
22 A. Good morning.
23 Q. On Exhibit 3, it looks like you still have it
24 open. You signed that document and in the last sentence
25 on the first paragraph says we share a community of

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Exhibit G

10/21/2019

Gmail - Appeal of dismissal



Michael Vieta-Kabell <mvkabell@gmail.com>

Appeal of dismissal

Danille Shamrell <dshamrell@co.nye.nv.us>

Wed, Sep 25, 2019 at 4:00 PM

To: Michael Vieta-Kabell <mvkabell@gmail.com>, Timothy Sutton <tsutton@co.nye.nv.us>, "Christopher R. Arabia" <crarabia@co.nye.nv.us>, brent huntley <brent@huntleynv.com>

Michael,

Based on direction from Chris Arabia, Nye County District Attorney I have been instructed to cease and desist from conducting the requested hearing and as such there will not be the hearing referenced below.

Danille

From: Michael Vieta-Kabell <mvkabell@gmail.com>

Sent: Tuesday, September 24, 2019 1:14 PM

To: Danille Shamrell <dshamrell@co.nye.nv.us>; Timothy Sutton <tsutton@co.nye.nv.us>; Christopher R. Arabia <crarabia@co.nye.nv.us>; brent huntley <brent@huntleynv.com>

Subject: Re: Appeal of dismissal

October 9th works for me. The only caveat is representation. I will advise promptly if I need to change dates to ensure I have counsel present. I have CC'd Brent Huntley on this email in those regards. I have also attached an Amended Notice of Appeal.

[Quoted text hidden]

<https://mail.google.com/mail/u/0?ik=0dc93f1a3f&view=pt&search=all&permmsgid=msg-f%3A1645680171859223525&simpl=msg-f%3A164568017185...> 1/1

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Exhibit H

1 Case No: OBC19-1383



FILED

APR 06 2020

STATE BAR OF NEVADA
BY: B. J. Jeli
OFFICE OF BAR COUNSEL

8 STATE BAR OF NEVADA

9 SOUTHERN NEVADA DISCIPLINARY BOARD

10 STATE BAR OF NEVADA,)

11 Complainant,)

12 vs.)

13 CHRISTOPHER ARABIA, ESQ.,)
14 BAR NO. 9749)

15 Respondent.)

COMPLAINT

16 TO: Christopher Arabia, Esq.
17 c/o Thomas Pitaro, Esq.
18 601 Las Vegas Blvd. South
Las Vegas, Nevada 89101

19
20 PLEASE TAKE NOTICE that pursuant to Supreme Court Rule ("SCR") 105(2) a
21 VERIFIED RESPONSE OR ANSWER to this Complaint must be filed with the Office of Bar
22 Counsel, State Bar of Nevada, 3100 W. Charleston Blvd, Suite 100, Las Vegas, Nevada 89102,
23 within twenty (20) days of service of this Complaint. Procedure regarding service is addressed
24 in SCR 109.

1 Please confirm via e-mail no later than 4:00 p.m. on Thursday, September
2 26, 2019, that you have vacated the proposed hearing regarding Mr. Vieta-
3 Kabell.

4 7. On September 25, 2019, the Nye County Human Resources Director emailed
5 Kabell, his counsel, the Nye County Manager, and Respondent to inform them that she was
6 instructed by Respondent to 'cease and desist from conducting the requested hearing' and
7 stating that there would not be a hearing on Kabell's appeal.

8 8. As Nye County District Attorney, Respondent regularly advised the Nye County
9 Human Resources Director and/or others in management positions in Nye County regarding
10 Nye County legal issues.

11 9. The Nye County Human Resources Director relied strictly on Respondent's
12 email when she cancelled the appeal hearing.

13 **COUNT ONE- RPC 1.7 (Conflict of Interest: Current Clients)**

14 10. RPC 1.7 states

15 (a) Except as provided in paragraph (b), a lawyer shall not represent a client
16 if the representation involves a concurrent conflict of interest. A concurrent
17 conflict of interest exists if:

18 (1) The representation of one client will be directly adverse to another
19 client; or

20 (2) There is a significant risk that the representation of one or more
21 clients will be materially limited by the lawyer's responsibilities to another client,
22 a former client or a third person or by a personal interest of the lawyer.

23 (b) Notwithstanding the existence of a concurrent conflict of interest under
24 paragraph (a), a lawyer may represent a client if:

25 (1) The lawyer reasonably believes that the lawyer will be able to provide
competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

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WHEREFORE, Complainant prays as follows:

1. That a hearing be held pursuant to Nevada Supreme Court Rule 105;
2. That Respondent be assessed the costs of the disciplinary proceeding pursuant to SCR 120; and
3. That pursuant to SCR 102, such disciplinary action be taken by the Southern Nevada Disciplinary Board against Respondent as may be deemed appropriate under the circumstances.

Dated this 6th day of April, 2020.

STATE BAR OF NEVADA
DANIEL M. HOOGE, Bar Counsel

By: *Kait Flocchini*
Kait Flocchini (Apr 6, 2020)
R. Kait Flocchini, Assistant Bar Counsel
Nevada Bar No. 9861
3100 W. Charleston Blvd, Suite 100
Las Vegas, Nevada 89102
(702)382-2200

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Exhibit I

1 **MTD**

2 THOMAS F. PITARO, ESQ.

3 Nevada Bar No. 1332

4 EMILY K. STRAND, ESQ.

5 Nevada Bar No. 15339

6 PITARO & FUMO, CHTD.

7 601 Las Vegas Boulevard

8 Las Vegas, NV 89101

9 Phone (702) 474-7554

10 Fax (702) 474-4210

11 Kristine.fumolaw@gmail.com

12 Attorneys for Respondent



FILED

APR 24 2020

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

7 **STATE BAR OF NEVADA**

8 **SOUTHERN NEVADA DISCIPLINARY BOARD**

9 STATE BAR OF NEVADA,

10 Complainant,

11 v.

12 CHRISTOPHER ARABIA, ESQ.,

13 Respondent.

Case No: OBC19-1383

MOTION TO DISMISS

15 **COMES NOW**, respondent, Christopher Arabia, by and through his attorneys of record,
16 THOMAS F. PITARO, ESQ. and EMILY K. STRAND, ESQ., of the law firm PITARO &
17 FUMO, CHTD., and hereby submits this Motion to Dismiss. This Motion is based on all the
18 filings and pleadings herein, the attached Memorandum of Points and Authorities, and any oral
19 argument deemed necessary.

20 **DATED** this 24th day of April, 2020.

21 Respectfully submitted,

22 /s/ Thomas F. Pitaro
23 Thomas F. Pitaro, Esq.
Nevada Bar No. 1332

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

24 *Attorneys for Respondent*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**
3 **Statement of Facts**

4 In 2018, the respondent, Christopher Arabia, was elected as the Nye County District
5 Attorney. He began his term in January of 2019 and still serves in that capacity. In his capacity
6 as District Attorney for Nye County, one of District Attorney Arabia's duties is to advise the Nye
7 County Human Resources Director and others in management positions in Nye County regarding
8 Nye County Legal Issues.

9 On September 18, 2019, District Attorney Arabia terminated Deputy District Attorney
10 Michael Vieta-Kabell's ("Kabell") employment with the Nye County District Attorney's office,
11 following months of on ongoing issues with Mr. Kabell's insubordination.

12 On September 23, 2019, Kabell filed an appeal of his termination with the Nye County
13 Human Resources Department. On September 24, 2019, Nye County Human Resources Director
14 scheduled an appeal hearing and notified Kabell, District Attorney Arabia, and the Nye County
15 Manager via email. In response, District Attorney Arabia emailed the Nye County Human
16 Resources Director and the Nye County Manager, stating:

17 It is my legal opinion as the Nye County District Attorney that you must cease
18 and desist from conducting the proposed meeting. The proposed hearing is
19 improper under NRS 252.070. Mr. Vieta-Kabell was an at-will employee appointed
20 (as opposed to hired) by the District Attorney's Office and terminable at any time
21 with or without cause. See NRS 252.070, Nye County Board of County
Commissioners Resolution 95-022, and Nye County Policies and Procedures
Manual Rev. 5-2017 ("at will" defined). As such, I have the right to revoke Mr.
Vieta-Kabell's appointment. See NRS 252.070.

22 Earlier this year, Mr. Vieta-Kabell asserted under oath that he was an "at-will"
23 employee when he gave sworn testimony that his position as Deputy DA did not
24 afford him due process protections against termination of employment. Now he is
contradicting his own prior sworn testimony and falsely claiming that he did have
such protections.

25 Please confirm via email no later than 4:00 p.m. on Thursday, September 26,
26 2019, that you have vacated the proposed hearing regarding Mr. Vieta-Kabell.
27

1 The testimony to which District Attorney Arabia was referring in his email occurred on
2 April 9, 2019. Mr. Kabell testified at a hearing in support of the Deputy District Attorney's
3 attempts to unionize. He stated that a union was necessary because he did not enjoy the same
4 benefits of those in the represented classification such as "due process in termination."¹

5 On September 25, 2019, the Nye County Human Resources Director emailed Kabell, his
6 counsel, the Nye County Manager, and District Attorney Arabia to inform them that she was
7 instructed by District Attorney Arabia to 'cease and desist from conducting the requested hearing'
8 and stating there would not be a hearing on Kabell's appeal.

9
10 **II.
Procedural History**

11 On April 6, 2020, the State Bar of Nevada filed a complaint against District Attorney
12 Arabia alleging violations of Nevada Rules of Professional Conduct (RPC) 1.7 and 8.4.
13 Specifically, they alleged that there was "a significant risk that [District Attorney Arabia's] advice
14 to the Nye County Human Resources Director was materially limited by his own personal interest
15 in defending his termination of Kabell." Thus, they allege that he violated RPC 1.7 Conflict of
16 Interest: Current Clients by not informing the Nye Country Human Resources Director of the
17 alleged concurrent conflict of interest and obtaining informed written consent to proceed with
18 advising the County.

19 Second, the State Bar also alleges that District Attorney Arabia violated RPC 8.4 by
20 "us[ing] his position as an advisor to Nye County to improperly influence whether Kabell received
21 an appeal hearing" thus, engaging in conduct that is prejudicial to the administration of justice.

22 As such, this motion follows.
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27 ¹ See *Nye Count Management Employees Assoc. v. Nye County*, Case No. 2018-012, State of Nevada
Local Government Employee-Management Relations Board.

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1 The *Wayment* Court embraced this holding notwithstanding that the fired employee
2 argued that his challenges to his supervisor (contending that an indictment was defective and
3 should be dismissed and refiled) were compelled by the rules of lawyer professional conduct.²

4
5 **IV.
Argument**

6 A. The State Bar has failed to state a claim upon which relief can be granted.

7 There is no dispute of material fact in the present case. Neither side disputes District
8 Attorney Arabia's actions. The only question is whether those actions violated established ethics
9 requirements for lawyers in Nevada.

10 Mr. Arabia, in his capacity as District Attorney for Nye County, has a statutory duty to
11 provide legal advice to Nye County and its administrators.³ In the present case, he advised the
12 county as to how to respond to a hearing request for an employee, as is his duty. The State Bar
13 has argued that in doing so District Attorney Arabia violated ethical rules because his
14 representation of the county was materially limited by his personal interest, namely that he was
15 the one who terminated Kabell's employment. However, the reader of the Complaint is left to
16 speculate as to what the risk was and how District Attorney Arabia's actions were limited by that
17 risk.

18 By its very nature, a conflict of interest implies that the person has some stake in the
19 outcome of a matter. Here, District Attorney Arabia had nothing to lose/gain in advising the
20 county whether the hearing was legally proper. Regardless of who advised the county regarding
21 the hearing, the outcome would have been the same. The case law is clear that Deputy District
22 Attorneys are at-will employees⁴ and thus, by law Kabell was not entitled to a hearing. Since he

23 _____
24 ² The Court noted, however, that Wayment's "contention that he was terminated for complying with his
25 mandatory ethical duties is a mere allegation . . . unsupported by any evidence" and that his constant
26 arguing with his supervisor constituted actionable insubordination regardless of the merits of any concern
27 Wayment may have had about the propriety of the indictment. *See* 112 Nev. at 236-37, 912 P.2d at 818-
19.

³ *See* NRS 252.160

⁴ *See Wayment v. Holmes*, 112 Nev. 232, 912 P.2d 816 (1996).

1 had no stake in the outcome of the decision to have a hearing, District Attorney Arabia did not
2 have a conflict of interest, and as such, his actions clearly did not violate RPC 1.7.

3 Similarly, District Attorney Arabia did not violate RPC 8.4 by improperly influencing
4 whether or not Kabell got a hearing. District Attorney Arabia was not the one who actually
5 prevented Kabell from having a hearing, he merely advised the County that the hearing was not
6 legally justified under the statute. The statute which precludes at-will employees from receiving
7 hearings was in place long before Arabia became District Attorney and the ultimate decision as
8 to whether or not to have the hearing was made by the Nye County Manager. There is no way
9 that District Attorney Arabia had any control over the implementation of a statute which pre-
10 dated his candidacy nor did he exert any control over the Nye County Manager or that office. As
11 such, he cannot be disciplined for violating RPC 8.4.

12 None of the State Bar's claims rise to a level requiring relief. The State Bar cannot
13 demonstrate a violation of either RPC 1.7 or RPC 8.4. As such, they have failed to assert a claim
14 upon which relief can be granted and this action should be dismissed pursuant to NRCP 12(b)(5).

15
16 B. District Attorney Arabia's actions occurred during the performance of his duties as
District Attorney and as such, he has qualified immunity.

17 Even if the State Bar was able to state a claim for relief in this case, District Attorney
18 Arabia's actions occurred during the performance of his duties and as such, he is immune from
19 legal actions resulting from those decisions. *See Wayment v. Holmes*, 112 Nev. 232, 912 P.2d 816
20 (1996).

21 In *Wayment*, the court held that it was within the discretion of the District Attorney to fire
22 at-will employees; and due to the fact that the termination was undertaken pursuant to the DA's
23 duties, he was immune from liability for the termination. Here, Kabell was fired for
24 insubordination, failure to follow instructions, deviation from established procedures, and causing
25 interpersonal problems in the office. District Attorney Arabia's decision to terminate an employee
26 like Kabell is squarely within the exercise or performance of a discretionary function or duty, and
27 as such, under NRS § 41.032, no action may be brought against District Attorney Arabia for his

1 decision to terminate Kabell. Furthermore, the instant case does not involve any allegations of
2 violations of professional responsibility in litigation by the defendant district attorney, as was the
3 case in *Wayment*. Consequently, the instant matter is one even more favorable to the defendant
4 than *Wayment*, which found no liability for the employee attorney's discharge.

5 The statutory duties of the Nye County District Attorney specifically include the
6 obligation to inform the county on legal matters.⁵ In this case, District Attorney Arabia had an
7 ethical and statutory obligation to inform the county that the hearing being requested by Kabell
8 would be contrary to Nye County Code and other statutory provisions. Because District Attorney
9 Arabia's advice was given during the performance of his statutorily obligated duties, the State
10 Bar is precluded from bringing an action against him based on his advice, as he has immunity
11 pursuant to NRS § 41.032. Therefore, the Complaint should be dismissed.

12
13 C. The State Bar lacks authority over decisions made by a public official in his or her elected
capacity.

14 Through the present Complaint, the State Bar of Nevada is attempting to interfere with
15 the office of an elected official. The decisions that District Attorney Arabia made were not in his
16 personal capacity, but in his capacity as the District Attorney for Nye County. To allow the State
17 Bar to discipline the District Attorney for decisions he made in his elected capacity essentially
18 gives the State Bar power to override the decisions of elected officials and exert their control on
19 public offices such as the Office of the District Attorney.

20 Here, the only conceivable way that District Attorney Arabia could be found guilty of
21 ethical violations requires the assumption that District Attorney Arabia had something to lose by
22 allowing Kabell a hearing. In order to reach that conclusion, the State Bar would have to make
23 the unilateral determination that Deputy District Attorneys in Nevada are not at-will employees
24 and thus entitled to a hearing. If that was the case, District Attorney Arabia benefitted when he
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26
27 ⁵ See NRS 252.160

advised that the hearing should not take place by ensuring a person he terminated was not reappointed to their previous position.

The problem with this analysis of course, is the fact that the State Bar does not have that level of authority. It is well-settled that Deputy District Attorneys are at-will employees. *See Wayment v. Holmes*, 112 Nev. 232, 912 P.2d 816 (1996). The State Bar cannot overrule Nevada Supreme Court precedent. Further, a State Bar disciplinary panel has no authority to provide Kabell any relief (including returning him to his previous position) because the authority to appoint Deputy District Attorney's is a power reserved to the District Attorney himself. *See* NRS 252.070.

The State Bar does, of course, generally have disciplinary authority over Nevada attorneys. But allowing the State Bar to discipline District Attorney Arabia for decisions he made in his elected capacity as a public official managing his office and advising other country government officials on legal matters would effectively give the State bar power to interfere with the decisions of any member of the bar who holds elected office.

Such action would undoubtedly have a chilling effect, both on lawyers who seek elected office, but also on lawyers who currently hold office. Essentially a decision in favor of the State Bar in the present case would give the State Bar the power to impose penalties on an elected attorney whenever State Bar officials disagree with a lawyer holding public office. This possibility poses the very real threat that current officeholders might refrain from performing their duties to the best of their abilities for fear of “rocking the boat.” Further persecution of Mr. Arabia could have very serious and lasting consequences on the Nevada legal, political, and judicial landscapes.

V. Conclusion

The present Complaint fails to adequately allege a complaint upon which relief could be granted. Even if it did, Mr. Arabia, as the District Attorney for Nye County, is entitled to immunity from actions taken as a result of his performance of his job duties. Any decision contrary to

1 District Attorney Arabia grants new and unfettered power to the State Bar which could seriously
2 infringe on the office of the District Attorney, the Attorney General, and any other elected officer
3 who is also a member of the bar. For all these reasons, District Attorney Arabia respectfully
4 requests that the Complaint in this case be dismissed with prejudice.

5 **DATED** this 24th day of April, 2020.

6 Respectfully submitted,

7
8 /s/ Thomas F. Pitaro
Thomas F. Pitaro, Esq.
Nevada Bar No. 1332

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

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10 *Attorneys for Respondent*
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Exhibit J

Case No: OBC19-1383



FILED

MAY 07 2020

STATE BAR OF NEVADA
BY: B. Felix
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,
Complainant,
vs.
CHRISTOPHER ARABIA, ESQ.,
BAR NO. 9749
Respondent.

OPPOSITION TO RESPONDENT'S
MOTION TO DISMISS COMPLAINT

The State Bar of Nevada, by and through Assistant Bar Counsel R. Kait Flocchini, hereby responds to Respondent's Motion to Dismiss Complaint and requests that the motion be denied.

This Opposition is based on the following Memorandum of Points and Authorities, the pleadings in this matter, and any oral argument requested by the Board Chair.

MEMORANDUM OF POINTS AND AUTHORITIES

The Motion to Dismiss argues that Respondent cannot be disciplined because he is an elected official and, since he did not care if the fired employee received a hearing, he cannot be disciplined for advising the Nye County Human Resources Director to immediately "cease and

1 desist” with the hearing. The first argument attempts to confuse the issues in the disciplinary
2 matter — the Complaint has no allegation that Respondent violated the Rules of Professional
3 Conduct (“RPC”) because of the firing. Also, the immunity of a government official is not
4 absolute. The second argument requires evaluation of facts beyond the allegations in the
5 Complaint, and therefore, even if true are not a basis to dismiss the Complaint. For these
6 reasons, the Motion to Dismiss should be denied.

7 **Standard for a Motion to Dismiss**

8 Rule 8 of the Nevada Rules of Civil Procedure (“NRCP”) provides that a claim “shall
9 contain (1) a short and plain statement of the claim showing the pleader is entitled to relief and
10 (2) a demand for judgment for the relief the pleader seeks.” Pursuant to NRCP 12 (b)(5), a
11 complaint, or a portion thereof, may be dismissed for failure to state a claim upon which relief
12 may be granted. When entertaining a motion to dismiss, pursuant to NRCP 12(b)(5), the “task
13 is to determine whether or not the challenged pleading sets forth allegations sufficient to make
14 out the elements of a right to relief.” *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110, 111
15 (1985). In making this determination, the allegations in the complaint “must be taken at ‘face
16 value’ and must be construed favorable in the plaintiff’s behalf.” *Id.* at 111-112 (citation
17 omitted). “The complaint cannot be dismissed for failure to state a claim unless it appears
18 beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of
19 fact, would entitle him to relief.” *Id.* at 112. (citation omitted).

20 A motion to dismiss asks for a review of the sufficiency of a complaint. It does not
21 include consideration of any facts not contained in the pleading. The instant Motion to Dismiss
22 requires analysis of additional facts and/or irrelevant statutes.

23 ///

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1 **Qualified Immunity Does not Override the State Bar's Ability to Regulate Lawyer**
2 **Conduct.**

3 The Motion to Dismiss argues that Respondent's firing of the Nye County Assistant
4 District Attorney cannot form the basis for discipline. See Motion at 6:16-7:4 and 7:13-8:9.
5 But the Complaint does not allege that any Rules of Professional Conduct were violated because
6 of the firing. The Complaint alleges that Respondent's conduct *after* he fired the Assistant
7 District Attorney violated the Rules of Professional Conduct. See *generally*, Complaint, filed
8 April 6, 2020, a true and correct copy of which is attached hereto as Exhibit A. Thus, the
9 argument cannot be used to analyze whether the allegations of the Complaint sufficiently make
10 out a claim for relief.

11 The Motion to Dismiss also asserts that prosecutorial qualified immunity means that
12 Respondent cannot be disciplined for his demand to the Nye County Human Resources
13 Director to 'cease and desist' conducting the requested hearing. See Motion at 7:5-11.
14 However, there are limits to the application of the qualified immunity and it cannot be used to
15 dismiss a sufficiently pled complaint. In *Edgar, supra*, 101 Nev. at 112, the Nevada Supreme
16 Court found that a civil complaint for malicious prosecution could not be dismissed based on
17 the qualified immunity alone. Moreover, immunizing an elected prosecutor from any sanction
18 for misconduct would render other Rules of Professional Conduct, such as RPC 3.8 (Special
19 Responsibilities of a Prosecutor), moot.

20 As is recognized in the Motion to Dismiss, "[t]he State Bar does, of course, have
21 disciplinary authority over Nevada attorneys" and Respondent is a Nevada-licensed attorney.

22 The Motion to Dismiss's request for an overbroad application of NRS 41.032 should be
23 denied.

24 ///

1 **Respondent's Mental State When he Engaged in the Alleged Misconduct is an**
2 **Element of What Sanction, or Relief in the Disciplinary Context, is Appropriate,**
3 **Not Whether the Allegations State a Claim Upon Which Relief May be Granted.**

4 The Motion to Dismiss argues that "the only conceivable way that [Respondent] could
5 be found guilty of ethical violations requires the assumption that [Respondent] had something
6 to lose by allowing Kabell a hearing." Motion at 7:20-22.

7 First, this argument requires analysis of facts outside the Complaint, and therefore,
8 cannot support dismissal.

9 Second, this argument acknowledges that there is *a set of facts*, which if accepted by the
10 trier of fact, would support sanctioning Respondent. This is the threshold for stating a claim
11 upon which relief may be granted.

12 Finally, the Supreme Court has instructed disciplinary panels that four factors must be
13 considered in sanctioning lawyers: (i) the duty violated, (ii) the mental state of the attorney
14 when he engaged in the misconduct, (iii) any injury or potential injury cause by the misconduct,
15 and (iv) any aggravating or mitigating factors that warrant a deviation from the guidelines for
16 sanctions. *See In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1078 (2008).
17 Thus, Respondent's mental state is irrelevant to proving if misconduct occurred, and therefore,
18 irrelevant to the evaluation of whether a complaint should be dismissed pursuant to NRCPC
19 12(b)(5).

20 This argument fails to establish that there is no set of facts upon which Respondent
21 could be sanctioned. It is not a basis for dismissing the Complaint.

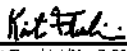
22 **Conclusion**

23 The Complaint alleges sufficient facts to make out the elements of a violation of RPC 1.7
24 (Conflict of Interest: Current Clients) and a violation of RPC 8.4 (Misconduct). The Motion to
25

1 Dismiss fails to assert otherwise, and instead, asks for consideration of facts beyond the
2 Complaint. The Motion should be denied.

3 Dated this 7th day of May, 2020.

4 STATE BAR OF NEVADA
5 DANIEL M. HOOGE, Bar Counsel

6 By: 
7 Rait Flocchini (May 7, 2020)
8 R. Kait Flocchini, Assistant Bar Counsel
9 Nevada Bar No. 9861
10 3100 W. Charleston Blvd, Suite 100
11 Las Vegas, Nevada 89102
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CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing
OPPOSITION TO RESPONDENT'S MOTION TO DISMISS COMPLAINT was
served via email to:

1. Ken Hogan, Esq. (Board Chair): ken@h2legal.com
2. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
emily@fumolaw.com.
3. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

Dated this 7 day of May, 2020.

Kristi Faust

Kristi Faust, an employee
of the State Bar of Nevada

Exhibit A

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Case No: OBC19-1383



FILED

APR 06 2020

STATE BAR OF NEVADA
BY: *B. Fili*
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
vs.)
CHRISTOPHER ARABIA, ESQ.,)
BAR NO. 9749)
Respondent.)

COMPLAINT

TO: Christopher Arabia, Esq.
c/o Thomas Pitaro, Esq.
601 Las Vegas Blvd. South
Las Vegas, Nevada 89101

PLEASE TAKE NOTICE that pursuant to 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, 3100 W. Charleston Blvd, Suite 100, Las Vegas, Nevada 89102,
within twenty (20) days of service of this Complaint. Procedure regarding service is addressed
in SCR 109.

1 Complainant, State Bar of Nevada ("State Bar"), by and through its Assistant Bar
2 Counsel, R. Kait Flocchini, is informed and believes as follows:

3 1. Attorney Christopher Arabia, Esq. ("Respondent"), Bar No. 9749, is currently an
4 active member of the State Bar of Nevada and at all times pertinent to this complaint had his
5 principal place of business for the practice of law located in Nye County, Nevada.

6 2. In 2019, Respondent was the Nye County District Attorney. He continues to be
7 the Nye County District Attorney.

8 3. On September 18, 2019, Respondent terminated Deputy District Attorney
9 Michael Vieta-Kabell's employment with the Nye County District Attorney's office.

10 4. On September 23, 2019, Kabell filed an appeal of his termination with the Nye
11 County Human Resources Department, citing a Nye County Code which provides for appeals
12 of disciplinary actions.

13 5. On September 24, 2019, the Nye County Human Resources Director notified
14 Kabell, Respondent, and the Nye County Manager via email that an appeal hearing had been
15 scheduled for October 9, 2019 at 1:30 p.m.

16 6. In response, on the same day, Respondent emailed the Nye County Human
17 Resources Director and the Nye County Manager, but not Kabell, stating:

18 It is my legal opinion as the Nye County District Attorney that you must
19 cease and desist from conducting the proposed meeting. The proposed hearing
20 is improper under NRS 252.070. Mr. Vieta-Kabell was an at-will employee
21 appointed (as opposed to hired) by the District Attorney's Office and terminable
22 at any time with or without cause. See NRS 252.070, Nye County Board of
County Commissioners Resolution 95-022, and Nye County Policies and
Procedures Manual Rev. 5-2017 ("at will" defined). As such, I have the right to
revoke Mr. Vieta-Kabell's appointment. See NRS 252.070.

23 Earlier this year, Mr. Vieta-Kabell asserted under oath that he was an "at-
24 will" employee when he gave sworn testimony that his position as Deputy DA did
25 not afford him due process protections against termination of employment. Now
he is contradicting his own prior sworn testimony and falsely claiming that he
did have such protections.

1 Please confirm via e-mail no later than 4:00 p.m. on Thursday, September
2 26, 2019, that you have vacated the proposed hearing regarding Mr. Vieta-
3 Kabell.

4 7. On September 25, 2019, the Nye County Human Resources Director emailed
5 Kabell, his counsel, the Nye County Manager, and Respondent to inform them that she was
6 instructed by Respondent to 'cease and desist from conducting the requested hearing' and
7 stating that there would not be a hearing on Kabell's appeal.

8 8. As Nye County District Attorney, Respondent regularly advised the Nye County
9 Human Resources Director and/or others in management positions in Nye County regarding
10 Nye County legal issues.

11 9. The Nye County Human Resources Director relied strictly on Respondent's
12 email when she cancelled the appeal hearing.

13 **COUNT ONE- RPC 1.7 (Conflict of Interest: Current Clients)**

14 10. RPC 1.7 states

15 (a) Except as provided in paragraph (b), a lawyer shall not represent a client
16 if the representation involves a concurrent conflict of interest. A concurrent
17 conflict of interest exists if:

18 (1) The representation of one client will be directly adverse to another
19 client; or

20 (2) There is a significant risk that the representation of one or more
21 clients will be materially limited by the lawyer's responsibilities to another client,
22 a former client or a third person or by a personal interest of the lawyer.

23 (b) Notwithstanding the existence of a concurrent conflict of interest under
24 paragraph (a), a lawyer may represent a client if:

25 (1) The lawyer reasonably believes that the lawyer will be able to provide
competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

1 (3) The representation does not involve the assertion of a claim by one
2 client against another client represented by the lawyer in the same litigation or
other proceeding before a tribunal; and

3 (4) Each affected client gives informed consent, confirmed in writing.

4 11. Respondent provided the Nye County Human Resources Director advice on the
5 handling of the Kabell's request for an appeal of his termination.

6 12. There is a significant risk that Respondent's advice to the Nye County Human
7 Resources Director was materially limited by his own personal interest in defending his
8 termination of Kabell.

9 13. Respondent did not advise Nye County Human Resources Director of the
10 concurrent conflict of interest.

11 14. Nye County did not give informed consent, confirmed in writing, to proceed with
12 Respondent advising Nye County on the termination issue despite Respondent's concurrent
13 conflict of interest.

14 15. In light of the foregoing, including without limitation paragraphs 2 through 9,
15 Respondent has violated RPC 1.7 (Conflict of Interest: Current Clients).

16 **COUNT TWO- RPC 8.4 (Misconduct)**

17 16. RPC 8.4(c) states "[i]t is professional misconduct for a lawyer to . . . (d) Engage
18 in conduct that is prejudicial to the administration of justice."

19 17. Respondent used his position as an advisor to Nye County to improperly
20 influence whether Kabell received an appeal hearing.

21 18. In light of the foregoing, including without limitation paragraphs 2 through 9,
22 Respondent has violated RPC 8.4(d) (Misconduct).

23
24 ///

1 WHEREFORE, Complainant prays as follows:

2 1. That a hearing be held pursuant to Nevada Supreme Court Rule 105;

3 2. That Respondent be assessed the costs of the disciplinary proceeding pursuant
4 to SCR 120; and

5 3. That pursuant to SCR 102, such disciplinary action be taken by the Southern
6 Nevada Disciplinary Board against Respondent as may be deemed appropriate under the
7 circumstances.

8 Dated this 6th day of April, 2020.

9 STATE BAR OF NEVADA
10 DANIEL M. HOOGE, Bar Counsel

11 Kait Flocchini
12 By: Kait Flocchini (Apr 6, 2020)
13 R. Kait Flocchini, Assistant Bar Counsel
14 Nevada Bar No. 9861
15 3100 W. Charleston Blvd, Suite 100
16 Las Vegas, Nevada 89102
17 (702)382-2200
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Exhibit K

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Case No: OBC19-1383

 **FILED**
MAY 14 2020
STATE BAR OF NEVADA
BY: *B. Felix*
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
vs.)
)
CHRISTOPHER ARABIA, ESQ.,)
BAR NO. 9749)
)
Respondent.)

ORDER

On April 24, 2020, the Respondent, Christopher Arabia, by and through his counsel of record, Thomas F. Pitaro, Esq., and Emily K. Strand, Esq., filed a Motion to Dismiss the above-referenced matter. On May 7, 2020, the State Bar of Nevada, by and through Assistant Bar Counsel, R. Kait Flocchini, Esq., filed an Opposition to Respondent's Motion to Dismiss Complaint.

Having considered all the written arguments presented by the parties, the Disciplinary Board Chair makes the following Finds of Fact and Conclusions of Law:

1 **FINDINGS OF FACT and CONCLUSIONS OF LAW**

2 The Chair finds that on its face, the Complaint sufficiently states claims upon two
3 provisions of the Rules of Professional Conduct. The analysis necessary to adjudicate the
4 Motion, then, concerns two remaining inquiries.

5 The first question to be addressed is whether there is any set of facts upon which it can
6 be proven that Respondent's communication to the HR director was materially limited by
7 Respondent's interests (see Complaint, Para. 12) and/or that the communication was
8 prejudicial to the administration of justice (see Complaint, Para. 17). The Chair finds those
9 facts could potentially be proven, although it would appear that if everything that was said in
10 the Respondent's communication was complete and accurate (as to the absence of right of a
11 Deputy District Attorney to a termination appeal) it could be exceedingly difficult to prove
12 either of the Claims under the required standard. The accuracy of the Respondent's citations
13 within the communication, however, is an issue for summary judgment rather than dismissal.

14 The second inquiry relevant to adjudicating this Motion is the applicability of
15 qualified discretionary-function immunity in dismissing a disciplinary complaint. It is worth
16 stating that the function of disciplinary proceedings is not to assess the Respondent's conduct
17 within the limited context of his specific job description, but to assess his conduct against the
18 obligations he has accepted, more broadly, as a licensed attorney. The rules apply to all
19 attorneys equally. The Chair accordingly holds that the qualified immunity doctrine is not
20 applicable to disciplinary proceedings, and to the contrary, I conclude as a matter of law, that
21 the doctrine applies only to insulate state employees and officials from liability in negligence
22 torts. See Martinez v. Maruszczak, 168 P.3d 720, 727 (2007) (where the Nevada Supreme Court
23 observed that §41.032(2) mirrored the Federal Tort Claims Act ("FTCA")); see also City of
24 Boulder City v. Boulder Excavating, Inc., 124 Nev. 749, 756, 191 P.3d 1175, 1179 (2008)
25 (explaining succinctly that "NRS 41.032 provides that government actors following statutory

1 guidelines or exercising their discretion are immune from common law tort actions in
2 connection with their statutory duties or their discretion"). As noted, this is a disciplinary
3 Complaint, not sounding in tort.

4 It should be further noted, that qualified immunity is an affirmative defense that must
5 be proven, which -- even if the doctrine were applicable in these circumstances -- creates
6 questions of fact that would preclude dismissal, and perhaps, even summary judgment. See
7 e.g. City of Boulder City, supra, at 754-755; see also Edgar v. Wagner, 101 Nev. 226, 228, 699
8 P.2d 110, 112 (1985) (explaining that "protection from liability depends upon a showing that
9 the prosecutor entertained a good faith, reasonable belief in actions taken in an administrative
10 capacity").

11 Upon the foregoing, where there are a set of facts that could potentially be proven to
12 support the claims for relief, and where such claims are grounded upon the Rules of
13 Professional Conduct rather than sounding in common law tort, the Motion is **DENIED**.

14 **IT IS HEREBY FURTHER ORDERED** that, pursuant to Rule 12(a)(3) of the Nevada
15 Rules of Civil Procedure, Respondent's responsive pleading must be filed and served no later
16 than 14 days after the service of this Order.

17 Dated this 14 day of May, 2020.

18 STATE BAR OF NEVADA
19 SOUTHERN NEVADA DISCIPLINARY BOARD

20 By: Kenneth E Hogan
Kenneth E Hogan (May 14, 2020 12:36 PDT)
21 Ken Hogan, Esq.
22 Board Chair
23
24
25

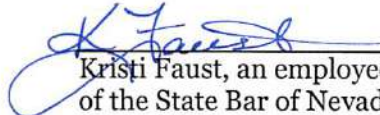
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CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing
ORDER was served via email to:

1. Ken Hogan, Esq. (Board Chair): ken@h2legal.com
2. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
emily@fumolaw.com.
3. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

Dated this 14 day of May, 2020.



Kristi Faust, an employee
of the State Bar of Nevada

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Exhibit L

1 **ANS**
2 THOMAS F. PITARO, ESQ.
3 Nevada Bar No. 1332
4 Kristine.fumolaw@gmail.com
5 EMILY K. STRAND, ESQ.
6 Nevada Bar No. 15339
7 emily@fumolaw.com
8 PITARO & FUMO, CHTD.
9 601 Las Vegas Boulevard
10 Las Vegas, NV 89101
11 Phone (702) 474-7554
12 Fax (702) 474-4210
13 Attorneys for Respondent



8 **STATE BAR OF NEVADA**

9 **SOUTHERN NEVADA DISCIPLINARY BOARD**

10 STATE BAR OF NEVADA,

11 Complainant,

12 v.

13 CHRISTOPHER ARABIA, ESQ.,

14 Respondent.

ANSWER

15
16 **COMES NOW**, respondent, District Attorney Christopher Arabia, by and through his
17 attorneys of record, THOMAS F. PITARO, Esq. and EMILY K. STRAND, Esq., of the law firm
18 PITARO & FUMO, CHTD., and hereby answers the Complainant's complaint as follows:

19 1. In answering Paragraph 1 of the Complaint on file herein, Respondent ADMITS
20 the allegations contained therein.

21 2. In answering Paragraph 2 of the Complaint on file herein, Respondent ADMITS
22 the allegations contained therein.

23 3. In answering Paragraph 3 of the Complaint on file herein, Respondent ADMITS
24 the allegations contained therein.

25 4. In answering Paragraph 4 of the Complaint on file herein, Respondent ADMITS
26 the allegations contained therein.
27

1 5. In answering Paragraph 5 of the Complaint on file herein, Respondent ADMITS
2 the allegations contained therein.

3 6. In answering Paragraph 6 of the Complaint on file herein, Respondent ADMITS
4 the allegations contained therein.

5 7. In answering Paragraph 7 of the Complaint on file herein, Respondent ADMITS
6 the allegations contained therein.

7 8. In answering Paragraph 8 of the Complaint on file herein, Respondent ADMITS
8 the allegations contained therein.

9 9. In answering Paragraph 9 of the Complaint on file herein, Respondent avers he is
10 without sufficient knowledge or information to form a belief as to the truth of the claim contained
11 in paragraph 9 of the Complainant's complaint, and, therefore, denies each such claim.
12

13 **COUNT ONE-RPC 1.7 (Conflict of Interest: Current Clients)**

14 10. In answering Paragraph 10 of the Complaint on file herein, Respondent ADMITS
15 the allegations contained therein.

16 11. In answering Paragraph 11 of the Complaint on file herein, Respondent ADMITS
17 the allegations contained therein.

18 12. In answering Paragraph 12 of the Complaint on file herein, Respondent DENIES
19 the allegations contained in Paragraph 12.

20 13. In answering Paragraph 13 of the Complaint on file herein, Respondent DENIES
21 the allegations that there was a concurrent conflict of interest and therefore denies the allegations
22 contained in Paragraph 13.

23 14. In answering Paragraph 14 of the Complaint on file herein, Respondent DENIES
24 the allegations that there was a concurrent conflict of interest and therefore denies the allegations
25 contained in Paragraph 14.

26 15. In answering Paragraph 15 of the Complaint on file herein, Respondent DENIES
27 the allegations contained in Paragraph 15.

1 **COUNT TWO-RPC 8.4 (Misconduct)**

2 16. In answering Paragraph 16 of the Complaint on file herein, Respondent ADMITS
3 the allegations contained therein.

4 17. In answering Paragraph 17 of the Complaint on file herein, Respondent DENIES
5 the allegations contained in Paragraph 17.

6 18. In answering Paragraph 18 of the Complaint on file herein, Respondent DENIES
7 the allegations contained in Paragraph 18.

8
9 **FIRST AFFIRMATIVE DEFENSE**

10 The State Bar of Nevada's Complaint and each claim for relief contained therein fails to
11 state a claim upon which relief may be granted.

12
13 **SECOND AFFIRMATIVE DEFENSE**

14 Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein
15 insofar as sufficient facts are not available after reasonable inquiry upon the filing of this
16 Answer, the Respondent therefore, reserves the right to amend this Answer to allege additional
17 Affirmative Defenses as subsequent investigation warrants.

18
19 **THIRD AFFIRMATIVE DEFENSE**

20 The State Bar of Nevada lacks in personam jurisdiction over this answering Respondent.

21 .

22 **FOURTH AFFIRMATIVE DEFENSE**

23 The State Bar of Nevada lacks subject matter jurisdiction over this issue.

24
25 **FIFTH AFFIRMATIVE DEFENSE**

26 The State Bar of Nevada's Complaint and each claim for relief contained therein are
27 barred by the Governmental Immunity Statutes of NRS Chapter 41.

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SIXTH AFFIRMATIVE DEFENSE

The State Bar of Nevada’s Complaint and each claim for relief contained therein are
barred by the failure of the State Bar of Nevada to plead those claims with particularity.

SEVENTH AFFIRMATIVE DEFENSE

This answering Respondent enjoys the privilege of qualified immunity.

EIGHTH AFFIRMATIVE DEFENSE

This answering Respondent was privileged to conduct the acts complained of.

NINTH AFFIRMATIVE DEFENSE

At all times, this answering Respondent acted in a legally permissible way.

DATED this 18th day of May, 2020.

Respectfully submitted,

/s/ Thomas F. Pitaro
Thomas F. Pitaro, Esq.
Nevada Bar No. 1332

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

Attorneys for Respondent

VERIFICATION
(Per NRS 15.010)

STATE OF NEVADA)
) ss:
CLARK COUNTY)

Under penalties of perjury, the undersigned declares that he is the Respondent named in the foregoing Answer and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes it to be true.

DATED this 20th day May, 2020



1 Case No: OBC19-1383



FILED

JUN 09 2020

STATE BAR OF NEVADA
BY: *B. Felix*
OFFICE OF BAR COUNSEL

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8 **STATE BAR OF NEVADA**
9 **SOUTHERN NEVADA DISCIPLINARY BOARD**

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11 STATE BAR OF NEVADA,)
12)
13 Complainant,)
14 vs.)
15 CHRISTOPHER ARABIA, ESQ.,)
BAR NO. 9749)
Respondent.)

SCHEDULING ORDER

16 Pursuant to Rule 17 of the Disciplinary Rules of Procedure, the Hearing Chair Marc
17 Cook Esq., met telephonically with R. Kait Flocchini, Esq., Assistant Bar Counsel, on behalf
18 of the State Bar of Nevada, Thomas F. Pitaro, Esq. and Emily K. Strand, Esq., on behalf of
19 Respondent Christopher R. Arabia, Esq. on June 8, 2020 to conduct the initial conference
20 in this matter. Initial disclosures, discovery issues, the potential for resolution of this
21 matter prior to the hearing, the hearing date, and related deadlines were discussed during
22 the Initial Conference.

23 During the Initial Conference, the parties agreed to the following:

24 1. All documents may be served electronically, unless otherwise required by the
25 Nevada Supreme Court Rules.

1 2. State Bar of Nevada's initial disclosures shall be served on or before June 19,
2 2020.

3 3. Respondent will provide initial disclosures which shall be served on or before
4 June 30, 2020. Such disclosures shall, to the extent applicable, comply with NRCP
5 16.1(a)(1).

6 4. At or before August 5, 2020 at 5:00 p.m., the parties shall exchange a list of
7 final hearing exhibits, identified numerically by the State Bar and alphabetically by
8 Respondent, and a list of all witnesses the party intends to call to testify at the Formal
9 Hearing.

10 5. The parties shall meet with Chair Cook on August 10, 2020 at 2:00 p.m.
11 telephonically for the Pre-hearing Conference. Pursuant to Rule 23 of the Disciplinary
12 Rules of Procedure, at the Pre-hearing conference (i) the parties shall discuss all matters
13 needing attention prior to the hearing date, (ii) the Chair may rule on any motions or
14 disputes including motions to exclude evidence, witnesses, or other pretrial evidentiary
15 matter, and (iii) the parties shall discuss and determine stipulated exhibits proffered by
16 either bar counsel or respondent as well as stipulated statement of facts, if any.

17 6. The hearing for this matter shall be set for one day, to wit August 28, 2020,
18 starting at 9:00 a.m. and shall take place at the State Bar Office located at 3100 W.
19 Charleston Blvd., Suite 100, Las Vegas, Nevada 89102.

20 7. The Findings of Fact, Conclusion of Law, and Recommendation or Order in
21 this matter shall be due September 28, 2020.

22 8. The parties stipulate that venue is proper in Clark County.

23 ///


25 ///

9. The parties stipulate to waive SCR 105(2)(d) so that the remaining hearing panel members may be appointed more than 45 days prior to the scheduled hearing.

Based on the parties' verbal agreement to the foregoing during the telephonic Initial Conference and good cause appearing, IT IS SO ORDERED.

Dated this 9 day of June, 2020.

SOUTHERN NEVADA DISCIPLINARY BOARD


Marc Cook (Jun 9, 2020 12:39 PDT)
Marc Cook, Esq.
HEARING CHAIR

Submitted By:

STATE BAR OF NEVADA
DANIEL M. HOOGE, BAR COUNSEL

By: Kait Flocchini
R. Kait Flocchini, Assistant Bar Counsel
3100 W. Charleston Blvd, Suite 100
Las Vegas, Nevada 89102
702-382-2200


Proposed Scheduling Order (SBN v. Arabia)


Final Audit Report


2020-06-09


Created:	2020-06-08
By:	Kait Flocchini (Kaitf@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAS1S2uiLJ3YuLEMxNRL8HEOe9Btq8o6Vf


"Proposed Scheduling Order (SBN v. Arabia)" History

-  Document created by Kait Flocchini (Kaitf@nvbar.org)
2020-06-08 - 11:30:58 PM GMT- IP address: 107.220.215.132

-  Document emailed to Marc Cook (mcook@bckltd.com) for signature
2020-06-08 - 11:31:22 PM GMT

-  Email viewed by Marc Cook (mcook@bckltd.com)
2020-06-09 - 5:11:39 PM GMT- IP address: 174.71.209.84

-  Document e-signed by Marc Cook (mcook@bckltd.com)
Signature Date: 2020-06-09 - 7:39:06 PM GMT - Time Source: server- IP address: 174.71.209.84

-  Signed document emailed to Sonia Del Rio (soniad@nvbar.org), Marc Cook (mcook@bckltd.com), emily@fumolaw.com, Thomas Pitaro (pitaro@gmail.com), and 3 more
2020-06-09 - 7:39:06 PM GMT



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CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing

SCHEDULING ORDER was served via email to:

1. Marc Cook, Esq. (Panel Chair): mcook@bckltd.com; SLopan@bckltd.com
2. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
emily@fumolaw.com; pitaro@gmail.com.
3. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

Dated this 9 day of June, 2020.



Sonia Del Rio, an employee
of the State Bar of Nevada



FILED

JUN 23 2020

Case No: OBC19-1383

STATE BAR OF NEVADA
BY: B. Felix
OFFICE OF BAR COUNSEL

**STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA,)
)
Complainant,)
vs.)
CHRISTOPHER ARABIA, ESQ.,)
BAR NO. 9749)
Respondent.)

**STATE BAR OF NEVADA'S
OPPOSITION TO
RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT**

The State Bar of Nevada, by and through Assistant Bar Counsel R. Kait Flocchini, hereby responds to Respondent's Motion for Summary Judgment and requests that the motion be denied.

This Opposition is based on the following Memorandum of Points and Authorities, the pleadings in this matter, and any oral argument requested by the Board Chair.

MEMORANDUM OF POINTS AND AUTHORITIES

Respondent seeks summary adjudication of the entire disciplinary matter based on an application of NRS 41.032. But, as the Board Chair already decided, NRS 41.032 does not apply to disciplinary proceedings.

Respondent also seeks summary adjudication on the specific alleged violations. Respondent's arguments require weighing of evidence, which renders a request for summary judgment inapplicable.

1 **A. Applicable Rule.**

2 A request for summary judgment is considered through the eye of a rational trier of fact.
3 An issue cannot be summarily adjudicated if a rational trier of fact could return a verdict for
4 the nonmoving party. *See Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (2005). Since the State
5 Bar is the nonmoving party for this motion, that means that if a rational trier of fact, *i.e.* a panel
6 member in this disciplinary matter, could find that Respondent's directive to the Nye County
7 Human Resources Director violated RPC 1.7 or RPC 8.4 then summary judgment cannot be
8 granted.

9 In addition, "the trial judge may not in granting summary judgment pass upon the
10 credibility or weight of the opposing affidavits or evidence. That function is reserved for the
11 trial." *Hidden Wells Ranch, Inc. v. Strip Realty, Inc.*, 425 P.2d 599, 83 Nev. 143 (Nev. 1967));
12 *see also Borgerson v. Scanlon*, 117 Nev. 216, 19 P.3d 236 (Nev. 2001) (*affirming Hidden Wells*
13 *Ranch, Inc. v. Strip Realty, Inc.*). Thus, if adjudication of the claims requires weighing
14 evidence or opposing statements, then it cannot be decided outside of hearing at which the
15 triers of fact considers such evidence.

16 **B. This Disciplinary Matter Does Not Require Analysis of Respondent's**
17 **Termination of Mr. Vieta-Kabell.**

18 Respondent argues extensively that his termination of Mr. Vieta-Kabell is protected by
19 NRS 41.032, and thus, cannot be the basis for disciplinary proceedings. But the State Bar has
20 not alleged that the termination violated any Rules of Professional Conduct. The State Bar's
21 Complaint concerns only Respondent's conduct after Mr. Vieta-Kabell's termination,
22 specifically when he directed the Nye County Human Resources Director to "cease and desist"
23 with holding a hearing on a request filed by Mr. Vieta-Kabell to review the dismissal.

1 **C. NRS 41.032 Does not Apply to Disciplinary Matters.**

2 Respondent argues that NRS 41.032 protects him from discipline based on his directive
3 to the Nye County Human Resources Director. This argument was already denied by the Board
4 Chair in the Order denying the Motion to Dismiss. The Order, filed May 14, 2020, denying
5 Respondent's Motion to Dismiss stated:

6 The Chair accordingly holds that the qualified immunity doctrine is not
7 applicable to disciplinary proceedings, and to the contrary, I conclude as a
8 matter of law, that the doctrine applies only to insulate state employees and
officials from liability in negligence torts.

9 Motion, Exhibit K (Order, filed May 14, 2020, 2:19-22). Respondent has provided no authority
10 for Chair Hogan's ruling to be reconsidered or disregarded. Thus, the law of this case is that
11 NRS 41.032 is inapplicable.

12 **D. Respondent Lacks Evidence to Support a Finding, as a Matter of Law,**
13 **that He Has Not Violated RPC 1.7 or RPC 8.4.**

14 First, Respondent argues that "he had nothing to lose/gain in advising the county," and
15 therefore could not have violated RPC 1.7 (Conflicts of Interest: Current Clients), as a matter
16 of law. Respondent's argument is not supported by admissible evidence. Respondent's
17 directive was regarding whether a hearing could be conducted to consider the propriety of his
18 termination of an employee. At such hearing, Respondent would have been required to defend
19 his conduct, even if that defense was merely to argue that he was statutorily allowed to
20 terminate Mr. Vieta-Kabell employment "at-will." Respondent stood to gain from the
21 cancellation of the hearing pursuant to his directive. *See e.g.* ABA Annotated Model Rules of
22 Professional Conduct, 9th Ed., Rule 1.7, Comment 10 ("For example, if the probity of a lawyer's
23 own conduct in a transaction is in serious question, it may be difficult or impossible for the
24 lawyer to give a client detached advice.")

1 Even assuming that Respondent will testify consistent with the argument, the Panel will
2 need to weigh Respondent's statement along with the other evidence, such as the Nye County
3 Human Resource's Director's statement that she cancelled the hearing after Respondent
4 directed her to "cease and desist" with the scheduled hearing. *See* Motion, Exhibit G (Email
5 dated September 25, 2019). If material facts and credibility need to be weighed, then the
6 matter is not ripe for summary adjudication.

7 Further, Respondent's argument fails to recognize that RPC 1.7(a)(2) applies when there
8 is "a significant risk" of a conflict materially limiting the lawyer's responsibilities to a client.
9 This is an objectively measurable concept. *See e.g. in re William G. Weier*, 994 S.W.2d
10 554(MO. 1999) (*finding* violation of RPC 1.7(a)(2) when lawyer failed to disclose his personal
11 interest in success of business to investors). Respondent's opinion of the significance of the
12 risk may be relevant to obtaining a waiver from the client, pursuant to RPC 1.7(b), but it does
13 not impact the application of RPC 1.7(a)(2). Frankly, Respondent's argument that he had
14 nothing to "lose/gain" is belied by the fact that he demanded Nye County "cease and desist"
15 with conducting the hearing and cancel the hearing within 48 hours of his directive.

16 Respondent argues that no reasonable trier of fact could find that his email to the Nye
17 County Human Resources Director, directing her to "cease and desist" proceeding with a
18 hearing to appeal his termination of an employee, was prejudicial to the administration of
19 justice. Respondent characterizes the email as "merely" advise and argues that he did not
20 prevent the hearing from taking place. Yet, Respondent argues no facts to support that the
21 cancellation was not at his direction. Further, the Nye County Human Resources Director
22 stated that the hearing would not take place "based on direction from Chris Arabia, Nye County
23 District Attorney." *See* Motion, Exhibit G (Email dated September 25, 2019). Again,
24 Respondent's argument requires the weighing of evidence, which is the exclusive jurisdiction
25

1 of the trier of fact. This means that the allegation of violating RPC 8.4 should not be summarily
2 adjudicated.

3 **Conclusion**

4 The Motion for Summary Judgment fails to show that no rational trier of fact could find
5 that Respondent's conduct violated RPC 1.7 or RPC 8.4, and therefore, summary adjudication
6 is not appropriate.

7 Dated this 23rd day of June, 2020.

8 STATE BAR OF NEVADA
9 DANIEL M. HOOGE, Bar Counsel

10 Kait Flocchini
11 By: Kait Flocchini (Jun 23, 2020 16:45 PDT)
12 R. Kait Flocchini, Assistant Bar Counsel
13 Nevada Bar No. 9861
14 3100 W. Charleston Blvd, Suite 100
15 Las Vegas, Nevada 89102
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CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing
OPPOSITION TO RESPONDENT'S MOTION TO DISMISS COMPLAINT was
served via email to:

1. Marc Cook, Esq. (Board Chair): mcook@bckltd.com; SLopan@bckltd.com
2. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
emily@fumolaw.com; pitaro@gmail.com
3. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

Dated this 23 day of June, 2020.

Sonia Del Rio

Sonia Del Rio, an employee
of the State Bar of Nevada

Case Nos: OBC19-1383



JUN 24 2020

STATE BAR OF NEVADA
BY: *B. Felix*
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
Complainant,)
vs.)
CHRISTOPHER ARABIA, ESQ.,)
BAR NO. 9749)
Respondent.)

STATE BAR OF NEVADA'S
INITIAL DISCLOSURES OF
DOCUMENTS AND WITNESSES

PLEASE TAKE NOTICE that the following is a list of witnesses and documents which may be offered against Respondent at the time of the formal hearing on the above-entitled complaint.

A. Documents.

The documents identified below are enclosed with this Disclosure and marked with Bates Numbers SBN1 through SBN 143.

B. Witnesses

1. Respondent Christopher Arabia, Esq., may testify about his advice the Nye County Human Resources Director.

1 2. Nye County Human Resources Director Danielle Shamrell may testify about
2 the scheduling of a hearing for Michael Vieta-Kabell's appeal of dismissal and
3 communications with Respondent regarding that scheduling.

4 3. Michael Vieta-Kabell may testify about the procedure for his appeal of
5 dismissal and communications with Ms. Shamrell, Nye County Manager Timothy Sutton,
6 and/or Respondent regarding the scheduling of a hearing for the appeal.

7 4. Rebecca Bruch, Esq., may testify about her retention as counsel to address Mr.
8 Vieta-Kabell's appeal of his dismissal.

9 5. A member of the staff in the Office of Bar Counsel may be called to testify
10 regarding records obtained by the State Bar of Nevada as well as Respondent's discipline and
11 licensure history.

12 The State Bar of Nevada reserves the right to supplement this disclosure.

13 DATED this 24th day of June, 2020.

14
15 STATE BAR OF NEVADA
 DAN M. HOOGE, Bar Counsel

16
17 By: *Kait Flocchini*
 Kait Flocchini (Jun 24, 2020 14:21 PDT)
18 R. Kait Flocchini, Assistant Bar Counsel
 Nevada Bar No. 9861
19 9456 Double R Blvd., Ste. B
 Reno, Nevada 89521
20 (775) 329-4100
 Attorney for State Bar of Nevada

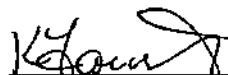
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **State Bar's Initial Disclosures of Documents and Witnesses** was electronically served upon:

Thomas Pitaro, Esq., Emily Strand, Esq. (Counsel for Respondent):
Kristine.fumolaw@gmail.com; emily@fumolaw.com; pitaro@gmail.com .

Dated this 24 day of June, 2020.



Kristi Faust, an employee of
the State Bar of Nevada






2020.06.24 - SBN Initial Disclosure

Final Audit Report

2020-06-24

Created:	2020-06-24
By:	Kristi Faust (kristif@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIjBI9koYleDoGroY8xPx3jIHZ4w6qxHZ

"2020.06.24 - SBN Initial Disclosure" History

-  Document created by Kristi Faust (kristif@nvbar.org)
2020-06-24 - 9:14:37 PM GMT - IP address: 72.193.102.232
-  Document emailed to Kait Flocchini (kaitf@nvbar.org) for signature
2020-06-24 - 9:14:53 PM GMT
-  Email viewed by Kait Flocchini (kaitf@nvbar.org)
2020-06-24 - 9:21:05 PM GMT - IP address: 107.220.215.132
-  Document e-signed by Kait Flocchini (kaitf@nvbar.org)
Signature Date: 2020-06-24 - 9:21:18 PM GMT - Time Source: server - IP address: 107.220.215.132
-  Signed document emailed to Kait Flocchini (kaitf@nvbar.org) and Kristi Faust (kristif@nvbar.org)
2020-06-24 - 9:21:18 PM GMT



Adobe Sign

Bar Complaint

RECEIVED

OCT 23 2019

OFFICE OF BAR COUNSEL

To: The State Bar of Nevada
From: Michael Vieta-Kabell
Address: 7853 Morning Queen Drive, Las Vegas, NV 89178
Phone: (702)-374-9397

Attorney at issue:
Christopher Arabia, Bar no. 9749
Nye County District Attorney
1520 East Basin Avenue, Suite 107, Pahrump, NV 89060

Relation to complainant:
Former supervisor

Witnesses:
Michael Vieta-Kabell, Complainant
Timothy Sutton, Nye County Manager
Danelle Shamrell, Human Resources Director for Nye County
Brian Kunzi, Esq.
Adam Levine, Esq.
Jason Lane Earnest, Esq.
Christi Kindel, Esq.
Don Chairez, Esq.
Nicholas Crosby, Esq.

Evidence:
Exhibit 1 – Written Appeal of Dismissal
Exhibit 2 – Email to Human Resources appealing termination
Exhibit 3 – Email from HR setting appeal hearing date
Exhibit 4 – Email to HR confirming appeal hearing date
Exhibit 5 – Email from HR cancelling appeal hearing
Exhibit 6 – Email to HR requesting DA Arabia's cease and desist directive
Exhibit 7 – Email from DA Arabia to HR advising HR to cease and desist

Related Matter:
EMRB case number 2018-012

Explanation of grievance:

This grievance stems from Nye County District Attorney Christopher Arabia ("DA Arabia") abusing his authority and position as the Nye County District Attorney to provide legal advice to a client in a matter where there was a significant risk that the representation would be materially limited by a personal interest of the lawyer, and using his position in to improperly influence a government agency to achieve his personal interest.

Complainant was employed as a Deputy District Attorney for Nye County for over ten years starting on May 19, 2009. On September 18, 2019 Complainant was terminated by his supervisor, DA Arabia. September 23, 2019 Complainant filed an appeal of his termination with Nye County Human Resources pursuant to Nye County Code chapter 2.38.110 as well as the Nye County Personnel Policy Manual section 11.1.3(5). (Exhibits 1 & 2).

On September 24, 2019 Complainant received notice via email from Nye County HR Director Danelle Shamrell, that an appeal hearing had been scheduled for October 9th at 1:30. (Exhibit 3). Subsequently, on September 24, 2019 Complainant confirmed that he would attend the appeal hearing and indicated that he would be retaining counsel. (Exhibit 4). On September 25, 2019 Complainant received an email from HR Director Shamrell stating that she was directed by District Attorney Arabia to cease and desist from conducting the requested hearing. (Exhibit 5). On September 25, 2019 Complainant requested a copy of DA Arabia's cease and desist directive. (Exhibit 6). On September 26, 2019 Complainant was provided with a copy of DA Arabia's cease and desist directive by HR Director Shamrell. (Exhibit 7).

I am asserting that this is a violation of Nevada Rule of Professional Conduct 1.7(a)(2) "Conflict of Interest: Current Clients". Therein, it states, "a lawyer shall not represent a client if the representation involves ... a significant risk that the representation of one or more clients will be materially limited by ... a personal interest of the lawyer."

As District Attorney, one of Mr. Arabia's duties is to, "give his or her legal opinion to any assessor, collector, auditor or county treasurer, and to all other county, township or district officers within his or her county, in any matter relating to the duties of their respective offices." NRS 252.160(1). However, this duty under the Nevada Revised statutes does not trump NRPC 1.7. By advising

the director of Human Resources to cancel Complainant's appeal hearing, District Attorney Arabia is acting in a representative capacity to the director of Human Resources when such representation is clearly limited by District Attorney Arabia's personal interest in denying Complainant due process review of his termination as afforded under Nye County Code 2.38.110.

Nye County Code 2.38.110 specifically allows Complainant to appeal his termination of employment to someone other than District Attorney Arabia, i.e. the County Manager. District Attorney Arabia clearly has a personal interest in ensuring that this does not occur. A review of Complainant's Exhibit 2, the appeal filed with Human Resources demonstrates why District Attorney Arabia would have a personal interest in undermining the Complainant's termination. Complainant's termination was clearly done improperly without affording complainant due process prior to termination.

It is also complainant's assertion that this action by District Attorney Arabia is a violation of NRPC 8.4(e) which states that, "It is professional misconduct for a lawyer to ... State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law."

District Attorney Arabia is clearly committing the initial violation of NRPC 1.7 to improperly influence a government agency or official to achieve his desired result of denying Complainant due process in termination as is afforded to Complainant under the Nye County Code chapter 2.38.

Complainant contends that DA Arabia's personal interest in terminating the complainant and denying the complainant due process under Nye County's merit based personnel system stems not only from avoiding any review of his failure to provide due process but also to from his personal interest in retaliating against the complainant for involvement in unionization efforts by the criminal division deputy district attorneys for Nye County. During the EMRB hearings related to case number 2018-012 the Complainant was identified as the "ring-leader" of these efforts. Complainant was also specifically advised by above listed witnesses Brian Kunzi, Adam Levine, Jason Lane Earnest Christi Kindel, and Don Chairez that DA Arabia had made statements to one or more of them that he was vehemently opposed to any efforts by the criminal DDAs to collectively bargain, and that he was specifically aware that the complainant was the "ring-leader" of said efforts.

Complainant is also aware that subsequent to his appeal hearing being cancelled that DA Arabia has also injected himself into settlement negotiations between Complainant and Nye County via counsel Nicholas Crosby who is the same counsel DA Arabia hired to oppose the Nye County Management Employees Association and the criminal deputy district attorneys in EMRB case number 2018-012, which further demonstrates DA Arabia's personal retaliatory motive in terminating the Complainant.

In conclusion, District Attorney Arabia has committed multiple violations of the Nevada Rules of Professional Conduct in order to strip the Complainant of due process afforded to him by the Nye County Code's merit based personnel system and retaliate against the complainant for attempting to collectively bargain. After failing to follow the due process requirements set forth in the Nye County Code's merit based personnel system prior to firing Complainant, District Attorney Arabia is now using his position as an elected official and legal counsel to Nye County to improperly influence the Human Resources department and advise them on matters where there is a significant risk that his representation will be materially limited by his personal interest in denying the Complainant due process and retaliating against him.

EXHIBIT 1

APPEAL OF DISMISSAL

TO: DANELLE SHAMRELL, NYE COUNTY HUMAN RESOURCES
FROM: MICHAEL VIETA-KABELL
SUBJECT: APPEAL OF TERMINATION
DATE: SEPTEMBER 23, 2019
CC: TIMOTHY SUTTON, CHRISTOPHER ARABIA, RYANNE GOTT

Pursuant to Nye County Code Chapter 2.38 and the Nye County Personnel Policy Manual I am hereby filing the instant appeal of my dismissal as an employee, said dismissal having occurred on September 18th or 2019.

1. Authority for appeal.

Nye County Code 2.38.010 defines Disciplinary Action as, "An action such as ... discharge from employment ... and which has been or may be imposed on an employee by an elected official for whom the employee is assigned to work. Pursuant to Nye County Code 2.38.110(F), "The personnel policies shall provide for appeals of disciplinary actions. In the case of a termination of employment, the appeal shall be to an individual other than the person making the disciplinary decision"

The Nye County Personnel Policy Manual Section 11.1.3(5) sets forth the process for appealing a disciplinary decision. Pursuant to that section, "The affected employee may appeal the disciplinary action to the County Manager by filing a written appeal with the Human Resource Director within five (5) work days of the effective date of the disciplinary action."

Certain classes of employees defined as "non-competitive" are exempted from the ability to appeal under NCC Chapter 28 and consequently NCPM Section 11.1.3. However, Appellant does not fall into any of the exempted classes set forth in NCC 28.38.030(b) & (c). Furthermore, under Appellant's executed Formal Offer of Employment, attached hereto as Exhibit 1, it specifically states under subsection 2, that Appellant, "will not be entitled to overtime compensation or compensatory time; however, [Appellant] will be entitled to any other benefit provisions as explained in the Nye County Personnel Policy Manual. Appellant's Formal Offer of Employment also states under subsection 3 that, "During the probationary period [Appellant is] an "at will" employee." As a ten year employee, Appellant is no longer within his probationary period, and therefore, is no longer an "at will employee." Additionally, nothing in Appellant's formal accepted offer of employment defines his position as "non-competitive."

Based on the authority of the Nye County Code and Nye County Personnel Policy Manual as set forth above, as well as the specific terms of Appellant's accepted Formal Offer of Employment, Appellant hereby appeals his dismissal.

2. Request for hearing.

NCPMP section 11.1.3(5)(b) states, "After an employee has submitted a timely appeal to the County Manager, the Human Resource Director will set a date for a disciplinary appeal hearing." Therefore, Appellant hereby requests that a disciplinary appeal hearing be held promptly.

3. Basis for appeal

I. Facts

Appellant has been a Deputy District Attorney for Nye County for over ten years under four District Attorneys. Until working for the current District Attorney, Appellant has never been subjected to any disciplinary action. Appellant's hard work and service to Nye County has allowed him to progress to the top of the pay scale for his classification, allowing him to secure food, clothing, shelter, and security for his family. Furthermore, in 2019 Appellant transferred his children to his employer provided health insurance and by doing so successfully secured in-home applied behavioral analysis therapy for Appellant's developmentally disabled and autistic son, which Appellant had been unsuccessful in securing through his wife's health insurance despite years of efforts.

On September 18, 2019 at approximately 3:00 p.m. District Attorney Christopher Arabia dismissed Appellant from employment. At that time Appellant asked why he was being dismissed and DA Arabia declined to provide any reason. Prior to being dismissed from employment Appellant received no notice, written or otherwise, of the proposed dismissal from employment.

II. Argument

a. Denial of Due Process

The actions of DA Arabia were an egregious violation of the appellant's right to due process in termination. The Nye County Code and the Nye County Personnel Policy Manual afford Nye County employees such as Appellant due process in termination. Pursuant to NCPMP 11.1.3:

Prior to taking disciplinary action involving suspension, reduction in pay, demotion, or termination against any regular employee, Nye County will take action intended to ensure that the employee is afforded due process. Due process in regard to employment-related disciplinary action includes, among other actions, making certain the employee is provided notice of the reason for the disciplinary action and is given the opportunity to provide a response to the proposed disciplinary action prior to an appropriate supervisor making a final decision regarding the disciplinary action.

According to NCC 2.38.110, "Prior to final decision to dismiss or suspend any employee, the person responsible for such decision shall offer to meet with the employee and to listen to his or her point of view as to the reasons for such possible discharge." Furthermore, pursuant to NCPPM 11.1.3(1):

In situations where the proposed disciplinary action involves a suspension, a reduction in pay, a demotion, and/or termination, written notice of the proposed disciplinary action will be hand-delivered or sent certified mail to the employee. The notice will include the following information:

- a. The nature of the disciplinary action proposed;
- b. The effective date of the proposed disciplinary action;
- c. A statement of the proposed disciplinary action with documentation, statements, and/or other evidence supporting the proposed disciplinary action;
- d. A statement advising the employee of his/her right to file a written response, or to submit a written request for a pre-disciplinary conference with the Human Resource Director, within five (5) work days of receipt of the notice of proposed disciplinary action; and
- e. A statement that the employee's failure to file a written response or request a pre-disciplinary conference in a timely manner, or to appear at the pre-disciplinary conference after requesting such, will constitute a forfeiture of the employee's rights to any further appeal.

NCPPM 11.1.3(2) affords employees subject to pending discipline the right to review evidence against them. NCPPM 11.1.3(3) affords employees the right to request a pre-disciplinary conference with the opportunity to present evidence in the employee's favor.

In the instant case because the right to due process in notice under NCPPM 11.1.3(1) was not followed by DA Arabia none of the other due process rights ensured by NCC or NCPPM were available to Appellant. By blindsiding Appellant with his dismissal and failing to provide any justification Appellant was unable to take advantage of any of the administrative procedures and protections to which he is entitled.

b. The dismissal was without cause

As stated supra, Appellant was not provided any reason for his dismissal either prior to or subsequent to DA Arabia taking said disciplinary action. Therefore, said Appellant's dismissal was presumptively unjustified.

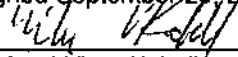
NCPPM 11.1.1 requires justification prior to taking disciplinary action against an employee.

In the event that District Attorney Arabia supplements the record to suggest that justification existed for the Appellant's dismissal, Appellant points out that the due process clauses mentioned above are rendered moot when justification is provided after the fact. The intention of rules in due process is to afford Appellant an opportunity to address allegations prior to suffering damage in the form of the loss of his job, financial loss, loss of opportunity to more effectively mitigate severe long-term disability for his dependent child, etc.

III. Conclusion

The action taken by District Attorney Arabia in dismissing Appellant constitutes a clear violation of Appellant's due process rights under the Nye County Code and Nye County Personnel Policy manual. Because of this denial of due process rights Appellant has clearly suffered damage and will likely suffer further damage both monetary and otherwise if the matter of Appellant's dismissal is not addressed promptly. Therefore, Appellant is requesting a prompt hearing on the matter of his dismissal pursuant to the authority cited herein.

Signed September 23, 2019,



Michael Vieta-Kabell

EXHIBIT



Nye County Human Resources & Risk Management

May 19, 2009

Michael Vieta-Kabell
3625 S Decatur Blvd. #1024
Las Vegas, NV 89103

Subject: Formal Offer of Employment

The terms and conditions of this offer of employment are outlined below. You should rely exclusively on the information contained in this letter. Please read the information below carefully. If you have questions, please contact Nye County Human Resources.

Mr. Vieta-Kabell,

In accordance with direction received from Robert Beckett, District Attorney, I am very pleased to formally offer you the position of Deputy District Attorney with a starting salary of \$37.16 per hour (NCMEA Grade 21, Step 1). Your start date will be Tuesday May 19, 2009.

The position will report directly to Robert Beckett at Nye County's District Attorney's Office, located at 1510 E. Basin Ave, Pahrump, NV. Your work hours and days will be Monday thru Friday, beginning at 8:00 a.m. and ending at 5:00 p.m. with a one (1) hour unpaid meal period daily. *Your workdays and hours may change at any time pending the needs of the County.*

Your continuous employment with Nye County is contingent upon you obtaining:

- A valid State of Nevada Driver's License
- Successful completion of pre-employment drug screen
- Successful completion and satisfactory background check
- Nevada State Bar License

At 10 a.m. on the morning of 05/19/09 you will report directly to the Human Resources office in Pahrump located @ 1510 E. Siri Lane, to complete your New Hire orientation. Please feel free to contact HR prior to this date with any questions at 751-6300. During your orientation, you will be provided with a copy of the Nye County Personnel Policies and Procedures, the terms and conditions of which pertain to this position.

At this orientation you will need to provide proof of citizenship per I-9 regulations. Please see attached list of acceptable documents you will need to bring with you.

775-482-7240 • Fax: 482-7245 • 1114 Gubernator Lane • PO Box 3400, Tonopah, NV 89009
775-751-6300 • Fax: 751-6309 • 1510 E. Siri Lane Suite 3, Pahrump, NV 89003

Michael Vieta-Kabell

May 19, 2009

Failure to produce documents could result in your start date being delayed. If you have any questions please contact Human Resources at 775-482-7240.

Nye County requires that you participate in pre-employment drug screen through a designated facility. Please contact the Human Resources Office in Tonopah at (775) 751-6300 for direction in scheduling this appointment prior to your date of hire.

Please read the information below carefully. If you have questions, please contact the personnel office.

1. Nye County provides individuals with disabilities reasonable accommodation necessary for successful job performance. If you believe that you require reasonable accommodation to perform the duties of this position now or at any time during your employment, please contact Danelle Shamrell in Personnel.
2. Your position of Deputy DA is FLSA exempt. As an FLSA exempt professional management employee, you will be compensated on the basis of performing all tasks and other duties required to assure the full, efficient and effective operations of the office/department, not on the number of hours worked. The salary schedule by which you will be paid has been developed in a manner intended to reflect the broad scope of your responsibility and the fact that your ordinary work day and work week will or may consist of more than eight (8) or forty (40) hours, respectively. You will not be entitled to overtime compensation or compensatory time; however, you will be entitled to any other benefit provisions as explained in the Nye County Personnel Policy Manual.
3. Your initial appointment will be as a probationary employee. The probationary period is twelve (12) months and is an extension of the selection process. Your performance will be evaluated at 3, 7 and 11 month intervals. At the end of twelve (12) months and successful completion of your probationary period you will be eligible for consideration for an anniversary step increase. Thereafter your performance and salary will be reviewed on an annual basis. During the probationary period you are an "at will" employee, which means that you may be terminated at any time, with or without cause and without the right of appeal. Similarly, you are free to resign at any time for any reason or no reason.
4. The benefits currently available to you include participation in the State of Nevada Public Employees' Retirement System (PERS), Nye County's health insurance program, and paid leave. You will receive information regarding the County's benefit package and the Nye County Personnel Policy Manual after you attend new employee orientation. All changes in your status and/or rights and benefits as a Nye County employee will be made in writing. The written notice may be a copy of the Nye County Personnel Policy Manual, which applies to your position.

(775) 482-7240 • Fax: 482-7245 • 1114 Glenbrook Lane • 3400, Tonopah, NV 89049
(775) 751-6300 • Fax: 751-6309 • 1310 E. Spruce Street S., Pahrump, NV 89060

Michael Vieta-Kabell

May 19, 2009

Please sign your acknowledgement of this letter in the space below indicating your acceptance of the position as defined above and return it to my attention.

Sincerely,

Danelle Shamrell

Danelle Shamrell
HR Manager

Digitally signed by Danelle
Shamrell
DN: cn=Danelle Shamrell, o=Nye
County, ou=Human Resources,
email=shamrell@nyecounty.us,
c=US
Date: 2009.05.19 13:52:03 -0700

cc: Robert Beckett – District Attorney

I hereby acknowledge acceptance of your offer of employment with Nye County as described above. I also acknowledge that I received a copy of the Deputy District Attorney job description and agree to read it thoroughly and address any questions to Danelle Shamrell, Nye County Human Resource Manager within 14 days.

Robert Beckett
Signature

5-19-09
Date

Please retain a copy for your records.

EXHIBIT 2



Michael Vieta-Kabell <mvkabell@gmail.com>

Appeal of dismissal

Michael Vieta-Kabell <mvkabell@gmail.com>

Mon, Sep 23, 2019 at 2:57 PM

To: Danelle Shamrell <Dshamrell@co.nye.nv.us>, tsutton@co.nye.nv.us, crarabia@co.nye.nv.us, Ryanne Gott <rgott@co.nye.nv.us>

I am hereby filing the attached appeal of my dismissal.

—
Michael Vieta-Kabell

Appeal of Dismissal.pdf
341K

EXHIBIT 3



Michael Vieta-Kabell <mvkabell@gmail.com>

Appeal of dismissal

Danelle Shamrell <dshamrell@co.nye.nv.us>

Tue, Sep 24, 2019 at 9:42 AM

To: Michael Vieta-Kabell <mvkabell@gmail.com>, Timothy Sutton <tsutton@co.nye.nv.us>, "Christopher R. Arabia" <crarabia@co.nye.nv.us>

All,

The appeal process requires a hearing which I have scheduled for October 9th starting at 1:30 in the Admin Conference room. Please provide a list of witnesses (if any) and any documentary evidence you intend to rely on at least five business days before the hearing.

I appreciate your reply to this email confirming your ability to meet on the referenced day.

Thank you,

D. Shamrell

Danelle Shamrell

Director of Human Resources

775-462-7242 Direct Line Tonopah

—

PO Box 3400; 101 Radar Road

Tonopah, NV 89049

775-293-1707 Mobile

775-751-6309 Fax

—

2100 E. Walt Williams Drive,
#110

Pahrump, NV 89048

775-751-6303 Direct Line Pahrump

775-751-6309 Fax

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10/21/2019

Gmail - Appeal of dismissal

contract amendment, or an acceptance of a counteroffer. This email does not constitute consent to the use of sender's contact information for direct marketing purposes or for transfers of data to third parties

[Quoted text hidden]

 **Appeal of Dismissal.pdf**
341K

<https://mail.google.com/mail/u/0?ik=0dc93f1a3f&view=pt&search=all&permmsgid=msg-f%3A1645575780275092568&simpl=msg-f%3A164557578027...> 2/2

SBN 018

EXHIBIT 4



Michael Vieta-Kabell <mvkabell@gmail.com>

Appeal of dismissal

Michael Vieta-Kabell <mvkabell@gmail.com>

Tue, Sep 24, 2019 at 1:14 PM

To: Danelle Shamrell <dshamrell@co.nye.nv.us>, tsutton@co.nye.nv.us, crarabla@co.nye.nv.us, brent huntley <brent@huntleynv.com>

October 9th works for me. The only caveat is representation. I will advise promptly if I need to change dates to ensure I have counsel present. I have CC'd Brent Huntley on this email in those regards. I have also attached an Amended Notice of Appeal.

[Quoted text hidden]

--

Michael Vieta-Kabell

 **Amended Appeal of Dismissal.pdf**
363K

EXHIBIT 5



Michael Vieta-Kabell <mvkabel@gmail.com>

Appeal of dismissal

Danille Shamrell <dshamrell@co.nye.nv.us>

Wed, Sep 25, 2019 at 4:00 PM

To: Michael Vieta-Kabell <mvkabel@gmail.com>, Timothy Sutton <tsutton@co.nye.nv.us>, "Christopher R. Arabia" <crarabia@co.nye.nv.us>, brent huntley <brent@huntleynv.com>

Michael,

Based on direction from Chris Arabia, Nye County District Attorney I have been instructed to cease and desist from conducting the requested hearing and as such there will not be the hearing referenced below.

*Danille***From:** Michael Vieta-Kabell <mvkabel@gmail.com>**Sent:** Tuesday, September 24, 2019 1:14 PM**To:** Danille Shamrell <dshamrell@co.nye.nv.us>; Timothy Sutton <tsutton@co.nye.nv.us>; Christopher R. Arabia <crarabia@co.nye.nv.us>; brent huntley <brent@huntleynv.com>**Subject:** Re: Appeal of dismissal

October 9th works for me. The only caveat is representation. I will advise promptly if I need to change dates to ensure I have counsel present. I have CC'd Brent Huntley on this email in those regards. I have also attached an Amended Notice of Appeal.

[Quoted text hidden]

EXHIBIT 6

10/21/2019

Gmail - Appeal of dismissal



Michael Vieta-Kabell <mvkabell@gmail.com>

Appeal of dismissal

Michael Vieta-Kabell <mvkabell@gmail.com>
To: Danelle Shamrell <dshamrell@co.nye.nv.us>

Wed, Sep 25, 2019 at 9:32 PM

Thank you for letting me know Danelle. Can you forward me Mr. Arabia's cease and desist directive?

Sent from my iPhone
[Quoted text hidden]

<https://mail.google.com/mail/u/0?ik=0dc93f1a3f&view=pt&search=all&permmsgid=msg-f%3A1645711066960645121&simpl=msg-f%3A164571106696...> 1/1

SBN 024

EXHIBIT 7

10/21/2019

Gmail - Appeal of dismissal



Michael Vieta-Kabell <mvtkabell@gmail.com>

Appeal of dismissal

Danellie Shamrell <dshamrell@co.nye.nv.us>
To: Michael Vieta-Kabell <mvtkabell@gmail.com>
Cc: Timothy Sutton <tsutton@co.nye.nv.us>

Thu, Sep 26, 2019 at 3:44 PM

Michael,

See the attached email regarding your below request.

[Quoted text hidden]

----- Forwarded message -----
From: "Christopher R. Arabia" <crarabia@co.nye.nv.us>
To: Danellie Shamrell <dshamrell@co.nye.nv.us>
Cc: Timothy Sutton <tsutton@co.nye.nv.us>
Re:
Date: Tue, 24 Sep 2019 23:42:04 +0000
Subject: Vieta-Kabell

Danellie,

It is my legal opinion as the Nye County District Attorney that you must cease and desist from conducting the proposed hearing.

The proposed hearing is improper under NRS 252.070. Mr. Vieta-Kabell was an at-will employee appointed (as opposed to hired) by the District Attorney's Office and terminable at any time with or without cause. See NRS 252.070, Nye County Board of County Commissioners Resolution 95-022, and Nye County Policies and Procedures Manual Rev. 5-2017 at p. 141 ("at will" defined). As such, I have the right to revoke Mr. Vieta-Kabell's appointment. See NRS 252.070.

Earlier this year, Mr. Vieta-Kabell asserted under oath that he was an "at will" employee when he gave sworn testimony that his position as Deputy DA did not afford him due process protections against termination of employment. Now he is contradicting his own prior sworn testimony and falsely claiming that he did have such protections.

Please confirm via e-mail no later than 4:00 p.m. on Thursday, September 26, 2019 that you have vacated the proposed hearing regarding Mr. Vieta-Kabell.

Sincerely,

CHRIS ARABIA
NYE COUNTY DISTRICT ATTORNEY
crarabia@co.nye.nv.us

Pahrump Office: 1620 E. Baker Avenue
Pahrump, Nevada 89060
Phone: 775-751-7000
Fax: 775-751-4229

Tonopah Office: 101 Radar Road
Tonopah, Nevada 89048
Phone: 775-482-8188
Fax: 775-482-8175

NYE COUNTY DISTRICT ATTORNEY COMMUNICATION

This communication is for use by the intended recipient and contains information that may be privileged, confidential or copyrighted under applicable law. Should the intended recipient of this electronic communication be a member of a public body within the State of Nevada be aware that it is a violation of the Nevada Open Meeting Law to use electronic communications to circumvent the spirit or letter of the Open Meeting Law (NRS Chapter 241) to not, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers. If you are not the intended recipient, you are hereby formally notified that any use, copying or distribution of this e-mail, in whole or in part, is strictly prohibited. Please notify the sender by return e-mail and delete this e-mail from your system. Unless explicitly and comprehensively designated as "E-Contract Intended," this email does not constitute a contract offer, a contract amendment, or an acceptance of a counteroffer. This email does not constitute consent to the use of sender's contact information for direct marketing purposes or for transfer of data to third parties.


<https://mail.google.com/mail/u/0/?ik=0dc93f1a3f&view=pt&search=all&permmsgid=msg-f%3A1645779742485312794&siml=msg-f%3A1645779742485312794>

1/2

SBN 026

10/21/2019

Gmail - Appeal of dismissal

 Vista-Kobalt.com
15K

SBN 027

STATE BAR OF NEVADA



November 15, 2019

Michael Vieta-Kabell, Esq.
7853 Morning Queen Drive
Las Vegas, NV 89178

RE: Grievance File #OBC19-1383/ Christopher Arabia, Esq. _____

Dear Mr. Vieta-Kabell:

Please be advised that a grievance file has been opened regarding this matter. The file number is indicated above.

Our office will conduct an investigation and then present the file to a Screening Panel of the Southern Nevada Disciplinary Board for its determination. The time required for the review process cannot be estimated because it is dependent upon the complexity and volume of complaints received at any given time; however, you will hear from us in due course.

I am the investigator assigned to this file. My direct line is (775) 328-1382 should you have any questions about the process.

Sincerely,

Laura Peters
Paralegal/Investigator
Office of Bar Counsel

3100 W. Charleston Blvd.
Suite 100
Las Vegas, NV 89102
phone 702.382.2200
toll free 800.254.2797
fax 702.385.2878

9456 Double R Blvd., Ste. B
Reno, NV 89521-5977
phone 775.329.4100
fax 775.329.0522

www.nvbar.org

STATE BAR OF NEVADA



November 15, 2019

Via Electronic and Regular Mail

Christopher Arabia, Esq.
Nye County District Attorney
1520 E. Basin Ave., Suite 107
Pahrump, NV 89060

3100 W. Charleston Blvd.
Suite 100
Las Vegas, NV 89102
phone 702.382.2200
toll free 800.254.2797
fax 702.385.2878

9456 Double R Blvd., Ste. B
Reno, NV 89521-5977
phone 775.329.4100
fax 775.329.0522

www.nvbar.org

RE: Grievance File OBC19-1383/ Michael Vieta-Kabell, Esq.

Dear Mr. Arabia:

The Office of Bar Counsel has received the enclosed correspondence from attorney Michael Vieta-Kabell which alleges professional misconduct on your part. As such, a grievance file has been opened.

Please respond in writing to this grievance. Your response should address each allegation contained within Mr. Vieta-Kabell's grievance and, whenever possible, all applicable documentation in support of your response should be included.

Please give this matter your immediate attention. This is a lawful demand for information from the Office of Bar Counsel in conjunction with an investigation. If no response is received from you, a screening panel of the Northern Nevada Disciplinary Board will be asked to consider your failure to respond as a failure to cooperate with the State Bar in its efforts to enforce Rules of Professional Conduct, which will be considered as a separate disciplinary violation pursuant to RPC 8.1(b) (Bar Admission and Disciplinary Matters).

I am the investigator assigned to this matter and can be reached directly at 775-328-1382 or by e-mail at laurap@nvbar.org. Please provide your response and the requested documentation **no later than December 9, 2019**.

Sincerely,

Laura Peters
Paralegal/Investigator
Office of Bar Counsel

/lp
Enclosure

Bar Complaint

To: The State Bar of Nevada
From: Michael Vieta-Kabell
Address: 7853 Morning Queen Drive, Las Vegas, NV 89178
Phone: (702)-374-9397

RECEIVED

OCT 23 2018

OFFICE OF BAR COUNSEL

Attorney at issue:
Christopher Arabia, Bar no. 9749
Nye County District Attorney
1520 East Basin Avenue, Suite 107, Pahrump, NV 89060

Relation to complainant:
Former supervisor

Witnesses:
Michael Vieta-Kabell, Complainant
Timothy Sutton, Nye County Manager
Danelle Shamrell, Human Resources Director for Nye County
Brian Kunzi, Esq.
Adam Levine, Esq.
Jason Lane Earnest, Esq.
Christi Kindel, Esq.
Don Chairez, Esq.
Nicholas Crosby, Esq.

Evidence:
Exhibit 1 – Written Appeal of Dismissal
Exhibit 2 – Email to Human Resources appealing termination
Exhibit 3 – Email from HR setting appeal hearing date
Exhibit 4 – Email to HR confirming appeal hearing date
Exhibit 5 – Email from HR cancelling appeal hearing
Exhibit 6 – Email to HR requesting DA Arabia's cease and desist directive
Exhibit 7 – Email from DA Arabia to HR advising HR to cease and desist

Related Matter:
EMRB case number 2018-012

Explanation of grievance:

This grievance stems from Nye County District Attorney Christopher Arabia ("DA Arabia") abusing his authority and position as the Nye County District Attorney to provide legal advice to a client in a matter where there was a significant risk that the representation would be materially limited by a personal interest of the lawyer, and using his position in to improperly influence a government agency to achieve his personal interest.

Complainant was employed as a Deputy District Attorney for Nye County for over ten years starting on May 19, 2009. On September 18, 2019 Complainant was terminated by his supervisor, DA Arabia. September 23, 2019 Complainant filed an appeal of his termination with Nye County Human Resources pursuant to Nye County Code chapter 2.38.110 as well as the Nye County Personnel Policy Manual section 11.1.3(5). (Exhibits 1 & 2).

On September 24, 2019 Complainant received notice via email from Nye County HR Director Danelle Shamrell, that an appeal hearing had been scheduled for October 9th at 1:30. (Exhibit 3). Subsequently, on September 24, 2019 Complainant confirmed that he would attend the appeal hearing and indicated that he would be retaining counsel. (Exhibit 4). On September 25, 2019 Complainant received an email from HR Director Shamrell stating that she was directed by District Attorney Arabia to cease and desist from conducting the requested hearing. (Exhibit 5). On September 25, 2019 Complainant requested a copy of DA Arabia's cease and desist directive. (Exhibit 6). On September 26, 2019 Complainant was provided with a copy of DA Arabia's cease and desist directive by HR Director Shamrell. (Exhibit 7).

I am asserting that this is a violation of Nevada Rule of Professional Conduct 1.7(a)(2) "Conflict of Interest: Current Clients". Therein, it states, "a lawyer shall not represent a client if the representation involves ... a significant risk that the representation of one or more clients will be materially limited by ... a personal interest of the lawyer."

As District Attorney, one of Mr. Arabia's duties is to, "give his or her legal opinion to any assessor, collector, auditor or county treasurer, and to all other county, township or district officers within his or her county, in any matter relating to the duties of their respective offices." NRS 252.160(1). However, this duty under the Nevada Revised statutes does not trump NRPC 1.7. By advising

the director of Human Resources to cancel Complainant's appeal hearing, District Attorney Arabia is acting in a representative capacity to the director of Human Resources when such representation is clearly limited by District Attorney Arabia's personal interest in denying Complainant due process review of his termination as afforded under Nye County Code 2.38.110.

Nye County Code 2.38.110 specifically allows Complainant to appeal his termination of employment to someone other than District Attorney Arabia, i.e. the County Manager. District Attorney Arabia clearly has a personal interest in ensuring that this does not occur. A review of Complainant's Exhibit 2, the appeal filed with Human Resources demonstrates why District Attorney Arabia would have a personal interest in undermining the Complainant's termination. Complainant's termination was clearly done improperly without affording complainant due process prior to termination.

It is also complainant's assertion that this action by District Attorney Arabia is a violation of NRPC 8.4(e) which states that, "It is professional misconduct for a lawyer to ... State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law."

District Attorney Arabia is clearly committing the initial violation of NRPC 1.7 to improperly influence a government agency or official to achieve his desired result of denying Complainant due process in termination as is afforded to Complainant under the Nye County Code chapter 2.38.

Complainant contends that DA Arabia's personal interest in terminating the complainant and denying the complainant due process under Nye County's merit based personnel system stems not only from avoiding any review of his failure to provide due process but also to from his personal interest in retaliating against the complainant for involvement in unionization efforts by the criminal division deputy district attorneys for Nye County. During the EMRB hearings related to case number 2018-012 the Complainant was identified as the "ring-leader" of these efforts. Complainant was also specifically advised by above listed witnesses Brian Kunzi, Adam Levine, Jason Lane Earnest Christi Kindel, and Don Chairez that DA Arabia had made statements to one or more of them that he was vehemently opposed to any efforts by the criminal DDAs to collectively bargain, and that he was specifically aware that the complainant was the "ring-leader" of said efforts.

Complainant is also aware that subsequent to his appeal hearing being cancelled that DA Arabia has also injected himself into settlement negotiations between Complainant and Nye County via counsel Nicholas Crosby who is the same counsel DA Arabia hired to oppose the Nye County Management Employees Association and the criminal deputy district attorneys in EMRB case number 2018-012, which further demonstrates DA Arabia's personal retaliatory motive in terminating the Complainant.

In conclusion, District Attorney Arabia has committed multiple violations of the Nevada Rules of Professional Conduct in order to strip the Complainant of due process afforded to him by the Nye County Code's merit based personnel system and retaliate against the complainant for attempting to collectively bargain. After failing to follow the due process requirements set forth in the Nye County Code's merit based personnel system prior to firing Complainant, District Attorney Arabia is now using his position as an elected official and legal counsel to Nye County to improperly influence the Human Resources department and advise them on matters where there is a significant risk that his representation will be materially limited by his personal interest in denying the Complainant due process and retaliating against him.

EXHIBIT 1

APPEAL OF DISMISSAL

TO: DANELLE SHAMRELL, NYE COUNTY HUMAN RESOURCES
FROM: MICHAEL VIETA-KABELL
SUBJECT: APPEAL OF TERMINATION
DATE: SEPTEMBER 23, 2019
CC: TIMOTHY SUTTON, CHRISTOPHER ARABIA, RYANNE GOTT

Pursuant to Nye County Code Chapter 2.38 and the Nye County Personnel Policy Manual I am hereby filing the instant appeal of my dismissal as an employee, said dismissal having occurred on September 18th or 2019.

1. Authority for appeal.

Nye County Code 2.38.010 defines Disciplinary Action as, "An action such as ... discharge from employment ... and which has been or may be imposed on an employee by an elected official for whom the employee is assigned to work. Pursuant to Nye County Code 2.38.110(F), "The personnel policies shall provide for appeals of disciplinary actions. In the case of a termination of employment, the appeal shall be to an individual other than the person making the disciplinary decision"

The Nye County Personnel Policy Manual Section 11.1.3(5) sets forth the process for appealing a disciplinary decision. Pursuant to that section, "The affected employee may appeal the disciplinary action to the County Manager by filing a written appeal with the Human Resource Director within five (5) work days of the effective date of the disciplinary action."

Certain classes of employees defined as "non-competitive" are exempted from the ability to appeal under NCC Chapter 28 and consequently NCPPM Section 11.1.3. However, Appellant does not fall into any of the exempted classes set forth in NCC 28.38.030(b) & (c). Furthermore, under Appellant's executed Formal Offer of Employment, attached hereto as Exhibit 1, it specifically states under subsection 2, that Appellant, "will not be entitled to overtime compensation or compensatory time; however, [Appellant] will be entitled to any other benefit provisions as explained in the Nye County Personnel Policy Manual. Appellant's Formal Offer of Employment also states under subsection 3 that, "During the probationary period [Appellant is] an "at will" employee." As a ten year employee, Appellant is no longer within his probationary period, and therefore, is no longer an "at will employee." Additionally, nothing in Appellant's formal accepted offer of employment defines his position as "non-competitive."

Based on the authority of the Nye County Code and Nye County Personnel Policy Manual as set forth above, as well as the specific terms of Appellant's accepted Formal Offer of Employment, Appellant hereby appeals his dismissal.

2. Request for hearing.

NCPPM section 11.1.3(5)(b) states, "After an employee has submitted a timely appeal to the County Manager, the Human Resource Director will set a date for a disciplinary appeal hearing." Therefore, Appellant hereby requests that a disciplinary appeal hearing be held promptly.

3. Basis for appeal

I. Facts

Appellant has been a Deputy District Attorney for Nye County for over ten years under four District Attorneys. Until working for the current District Attorney, Appellant has never been subjected to any disciplinary action. Appellant's hard work and service to Nye County has allowed him to progress to the top of the pay scale for his classification, allowing him to secure food, clothing, shelter, and security for his family. Furthermore, in 2019 Appellant transferred his children to his employer provided health insurance and by doing so successfully secured in-home applied behavioral analysis therapy for Appellant's developmentally disabled and autistic son, which Appellant had been unsuccessful in securing through his wife's health insurance despite years of efforts.

On September 18, 2019 at approximately 3:00 p.m. District Attorney Christopher Arabia dismissed Appellant from employment. At that time Appellant asked why he was being dismissed and DA Arabia declined to provide any reason. Prior to being dismissed from employment Appellant received no notice, written or otherwise, of the proposed dismissal from employment.

II. Argument

a. Denial of Due Process

The actions of DA Arabia were an egregious violation of the appellant's right to due process in termination. The Nye County Code and the Nye County Personnel Policy Manual afford Nye County employees such as Appellant due process in termination. Pursuant to NCPPM 11.1.3:

Prior to taking disciplinary action involving suspension, reduction in pay, demotion, or termination against any regular employee, Nye County will take action intended to ensure that the employee is afforded due process. Due process in regard to employment-related disciplinary action includes, among other actions, making certain the employee is provided notice of the reason for the disciplinary action and is given the opportunity to provide a response to the proposed disciplinary action prior to an appropriate supervisor making a final decision regarding the disciplinary action.

According to NCC 2.38.110, "Prior to final decision to dismiss or suspend any employee, the person responsible for such decision shall offer to meet with the employee and to listen to his or her point of view as to the reasons for such possible discharge." Furthermore, pursuant to NCPPM 11.1.3(1):

In situations where the proposed disciplinary action involves a suspension, a reduction in pay, a demotion, and/or termination, written notice of the proposed disciplinary action will be hand-delivered or sent certified mail to the employee. The notice will include the following information:

- a. The nature of the disciplinary action proposed;
- b. The effective date of the proposed disciplinary action;
- c. A statement of the proposed disciplinary action with documentation, statements, and/or other evidence supporting the proposed disciplinary action;
- d. A statement advising the employee of his/her right to file a written response, or to submit a written request for a pre-disciplinary conference with the Human Resource Director, within five (5) work days of receipt of the notice of proposed disciplinary action; and
- e. A statement that the employee's failure to file a written response or request a pre-disciplinary conference in a timely manner, or to appear at the pre-disciplinary conference after requesting such, will constitute a forfeiture of the employee's rights to any further appeal.

NCPPM 11.1.3(2) affords employees subject to pending discipline the right to review evidence against them. NCPPM 11.1.3(3) affords employees the right to request a pre-disciplinary conference with the opportunity to present evidence in the employee's favor.

In the instant case because the right to due process in notice under NCPPM 11.1.3(1) was not followed by DA Arabia none of the other due process rights ensured by NCC or NCPPM were available to Appellant. By blindsiding Appellant with his dismissal and failing to provide any justification Appellant was unable to take advantage of any of the administrative procedures and protections to which he is entitled.

b. The dismissal was without cause

As stated supra, Appellant was not provided any reason for his dismissal either prior to or subsequent to DA Arabia taking said disciplinary action. Therefore, said Appellant's dismissal was presumptively unjustified.

NCPPM 11.1.1 requires justification prior to taking disciplinary action against an employee.

In the event that District Attorney Arabia supplements the record to suggest that justification existed for the Appellant's dismissal, Appellant points out that the due process clauses mentioned above are rendered moot when justification is provided after the fact. The intention of rules in due process is to afford Appellant an opportunity to address allegations prior to suffering damage in the form of the loss of his job, financial loss, loss of opportunity to more effectively mitigate severe long-term disability for his dependent child, etc.

III. Conclusion

The action taken by District Attorney Arabia in dismissing Appellant constitutes a clear violation of Appellant's due process rights under the Nye County Code and Nye County Personnel Policy manual. Because of this denial of due process rights Appellant has clearly suffered damage and will likely suffer further damage both monetary and otherwise if the matter of Appellant's dismissal is not addressed promptly. Therefore, Appellant is requesting a prompt hearing on the matter of his dismissal pursuant to the authority cited herein.

Signed September 23, 2019,



Michael Vieta-Kabell



Nye County Human Resources & Risk Management

May 19, 2009

Michael Vieta-Kabell
3625 S Decatur Blvd. #1024
Las Vegas, NV 89103

Subject: Formal Offer of Employment

The terms and conditions of this offer of employment are outlined below. You should rely exclusively on the information contained in this letter. Please read the information below carefully. If you have questions, please contact Nye County Human Resources.

Mr. Vieta-Kabell,

In accordance with direction received from Robert Beckett, District Attorney, I am very pleased to formally offer you the position of Deputy District Attorney with a starting salary of \$37.16 per hour (NCMEA Grade 21, Step 1). Your start date will be Tuesday May 19, 2009.

The position will report directly to Robert Beckett at Nye County's District Attorney's Office, located at 1510 E. Basin Ave, Pahrump, NV. Your work hours and days will be Monday thru Friday, beginning at 8:00 a.m. and ending at 5:00 p.m. with a one (1) hour unpaid meal period daily. Your workdays and hours may change at any time pending the needs of the County.

Your continuous employment with Nye County is contingent upon you obtaining:

- A valid State of Nevada Driver's License
- Successful completion of pre-employment drug screen
- Successful completion and satisfactory background check
- Nevada State Bar License

At 10 a.m. on the morning of 05/19/09 you will report directly to the Human Resources office in Pahrump located @ 1510 E. Siri Lane, to complete your New Hire orientation. Please feel free to contact HR prior to this date with any questions at 751-6300. During your orientation, you will be provided with a copy of the Nye County Personnel Policies and Procedures, the terms and conditions of which pertain to this position.

At this orientation you will need to provide proof of citizenship per I-9 regulations. Please see attached list of acceptable documents you will need to bring with you.

751-482-7240 • Fax: 751-482-7245 • 1114 Gatestation Lane ~ PO Box 5400, Tonopah, NV 89049
751-751-6300 • Fax: 751-6309 • 1510 E. Siri Lane Suite 3, Pahrump, NV 89061

Michael Vicia-Kabell

May 19, 2009

Failure to produce documents could result in your start date being delayed. If you have any questions please contact Human Resources at 775-482-7240.

Nye County requires that you participate in pre-employment drug screen through a designated facility. Please contact the Human Resources Office in Tonopah at (775) 751-6300 for direction in scheduling this appointment prior to your date of hire.

Please read the information below carefully. If you have questions, please contact the personnel office.

1. Nye County provides individuals with disabilities reasonable accommodation necessary for successful job performance. If you believe that you require reasonable accommodation to perform the duties of this position now or at any time during your employment, please contact Danelle Shamrell in Personnel.
2. Your position of Deputy DA is FLSA exempt. As an FLSA exempt professional management employee, you will be compensated on the basis of performing all tasks and other duties required to assure the full, efficient and effective operations of the office/department, not on the number of hours worked. The salary schedule by which you will be paid has been developed in a manner intended to reflect the broad scope of your responsibility and the fact that your ordinary work day and work week will or may consist of more than eight (8) or forty (40) hours, respectively. You will not be entitled to overtime compensation or compensatory time; however, you will be entitled to any other benefit provisions as explained in the Nye County Personnel Policy Manual.
3. Your initial appointment will be as a probationary employee. The probationary period is twelve (12) months and is an extension of the selection process. Your performance will be evaluated at 3, 7 and 11 month intervals. At the end of twelve (12) months and successful completion of your probationary period you will be eligible for consideration for an anniversary step increase. Thereafter your performance and salary will be reviewed on an annual basis. During the probationary period you are an "at will" employee, which means that you may be terminated at any time, with or without cause and without the right of appeal. Similarly, you are free to resign at any time for any reason or no reason.
4. The benefits currently available to you include participation in the State of Nevada Public Employees' Retirement System (PERS), Nye County's health insurance program, and paid leave. You will receive information regarding the County's benefit package and the Nye County Personnel Policy Manual after you attend new employee orientation. All changes in your status and/or rights and benefits as a Nye County employee will be made in writing. The written notice may be a copy of the Nye County Personnel Policy Manual, which applies to your position.

(775) 482-7240 ~ Fax: 482-7245 * 1114 Gettemblow Lane ~ 3400, Tonopah, NV 89049
(775) 751-6300 ~ Fax: 751-6309 * 1510 E. Spruce Lane Suite 3, Primm, NV 89060

Michael Victor-Kalxell

May 19, 2009

Please sign your acknowledgement of this letter in the space below indicating your acceptance of the position as defined above and return it to my attention.

Sincerely,

Danelle Shamrell

Danelle Shamrell
HR Manager

Digitally signed by Danelle
Shamrell
DN: cn=Danelle Shamrell, ou=Nye
County, ou=Human Resources,
email=DShamrell@nyecounty.nv.us,
c=US
Date: 2009.05.19 11:52:00 -4700

cc: Robert Beckett – District Attorney

I hereby acknowledge acceptance of your offer of employment with Nye County as described above. I also acknowledge that I received a copy of the Deputy District Attorney job description and agree to read it thoroughly and address any questions to Danelle Shamrell, Nye County Human Resource Manager within 14 days.

Robert Beckett
Signature

5-19-09
Date

Please retain a copy for your records.

EXHIBIT 2

10/21/2019

Gmail - Appeal of dismissal



Michael Vieta-Kabell <mvkabell@gmail.com>

Appeal of dismissal

Michael Vieta-Kabell <mvkabell@gmail.com>

Mon, Sep 23, 2019 at 2:57 PM

To: Danelle Shamrell <Dshamrell@co.nye.nv.us>, tsutton@co.nye.nv.us, crarabia@co.nye.nv.us, Ryanne Gott
<rgott@co.nye.nv.us>

I am hereby filing the attached appeal of my dismissal.

—
Michael Vieta-Kabell

 Appeal of Dismissal.pdf
341K

<https://mail.google.com/mail/u/078c0dc93f1a3f&view=pt&search=all&permmsgid=msg-a%3Ar-6876837656636977360&simpl=msg-a%3Ar-68768376...> 1/1

EXHIBIT 3

10/21/2019

Gmail - Appeal of dismissal



Michael Vieta-Kabell <mvkabell@gmail.com>

Appeal of dismissal

Danella Shamrell <dshamrell@co.nye.nv.us>

Tue, Sep 24, 2019 at 9:42 AM

To: Michael Vieta-Kabell <mvkabell@gmail.com>, Timothy Sutton <tsutton@co.nye.nv.us>, "Christopher R. Arabia" <crarabia@co.nye.nv.us>

All,

The appeal process requires a hearing which I have scheduled for October 9th starting at 1:30 in the Admin Conference room. Please provide a list of witnesses (if any) and any documentary evidence you intend to rely on at least five business days before the hearing.

I appreciate your reply to this email confirming your ability to meet on the referenced day.

Thank you,

D. Shamrell

Danella Shamrell

Director of Human Resources

775-482-7242 Direct Line Tonopah

PO Box 3400; 101 Radar Road

Tonopah, NV 89049

775-283-1707 Mobile

775-751-6309 Fax

2100 E. Walt Williams Drive,
#110

Pahrump, NV 89048

775-751-6303 Direct Line Pahrump

775-751-6309 Fax

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10/21/2019

Gmail - Appeal of dismissal

contract amendment, or an acceptance of a counteroffer. This email does not constitute consent to the use of sender's contact information for direct marketing purposes or for transfers of data to third parties

[Quoted text hidden]

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341K

<https://mail.google.com/mail/u/0?ik=0dc93f1e3f&view=pt&search=all&permmsgid=msg-f%3A164557578027509256&siml=msg-f%3A164557578027...> 2/2

SBN 047

EXHIBIT 4

10/21/2019

Gmail - Appeal of dismissal



Michael Vieta-Kabell <mvkabel@gmail.com>

Appeal of dismissal

Michael Vieta-Kabell <mvkabel@gmail.com>


Tue, Sep 24, 2019 at 1:14 PM

To: Danielle Shamrell <dshamrell@co.nye.nv.us>, tsutton@co.nye.nv.us, crarabla@co.nye.nv.us, brent huntley <brent@huntleynv.com>

October 9th works for me. The only caveat is representation. I will advise promptly if I need to change dates to ensure I have counsel present. I have CC'd Brent Huntley on this email in those regards. I have also attached an Amended Notice of Appeal.

[Quoted text hidden]

—
Michael Vieta-Kabell

 Amended Appeal of Dismissal.pdf
363K

<https://mail.google.com/mail/u/0/?ik=0dc93f1a3f&view=pt&search=all&permmsgid=msg-a%3Ar8901195570117412911&siml=msg-a%3Ar8901195570...> 1/1

EXHIBIT 5

SBN 050



Michael Vieta-Kabell <mvkabell@gmail.com>

Appeal of dismissal

Danelle Shamrell <dshamrell@co.nye.nv.us>

Wed, Sep 25, 2019 at 4:00 PM

To: Michael Vieta-Kabell <mvkabell@gmail.com>, Timothy Sutton <tsutton@co.nye.nv.us>, "Christopher R. Arabia" <crarabia@co.nye.nv.us>, brent huntley <brent@huntleynv.com>

Michael,

Based on direction from Chris Arabia, Nye County District Attorney I have been instructed to cease and desist from conducting the requested hearing and as such there will not be the hearing referenced below.

*Danelle***From:** Michael Vieta-Kabell <mvkabell@gmail.com>**Sent:** Tuesday, September 24, 2019 1:14 PM**To:** Danelle Shamrell <dshamrell@co.nye.nv.us>; Timothy Sutton <tsutton@co.nye.nv.us>; Christopher R. Arabia <crarabia@co.nye.nv.us>; brent huntley <brent@huntleynv.com>**Subject:** Re: Appeal of dismissal

October 9th works for me. The only caveat is representation. I will advise promptly if I need to change dates to ensure I have counsel present. I have CC'd Brent Huntley on this email in those regards. I have also attached an Amended Notice of Appeal.

[Quoted text hidden]

EXHIBIT 6

10/21/2019

Gmail - Appeal of dismissal



Michael Vieta-Kabell <mvkabell@gmail.com>

Appeal of dismissal

Michael Vieta-Kabell <mvkabell@gmail.com>
To: Danelle Shamrell <dshamrell@co.nye.nv.us>

Wed, Sep 25, 2019 at 9:32 PM

Thank you for letting me know Danelle. Can you forward me Mr. Arabia's cease and desist directive?

Sent from my iPhone
[Quoted text hidden]

<https://mail.google.com/mail/u/0?ik=0dc93f1a3f&view=pt&search=all&permmsgid=msg-f%3A1645711066860845121&siml=msg-f%3A164571106686...> 1/1

SBN 053

EXHIBIT 7

10/21/2019

Gmail - Appeal of dismissal



Michael Vets-Kabell <vetzkabell@gmail.com>

Appeal of dismissal

Doretha Sherman <dsherma@co.nye.nv.us>
Re: Michael Vets-Kabell <vetzkabell@gmail.com>
Cc: Timothy Sullivan <tsullivan@co.nye.nv.us>

Thu, Sep 26, 2019 at 3:44 PM

Michael,

See the attached email regarding your below request.

(Forwarded mail link)

----- Forwarded message -----
From: "Christopher R. Ambler" <crambler@co.nye.nv.us>
To: Doretha Sherman <dsherma@co.nye.nv.us>
Cc: Timothy Sullivan <tsullivan@co.nye.nv.us>
Bcc:
Date: Tue, 24 Sep 2019 23:42:04 +0000
Subject: Vets-Kabell

Doretha,

It is my legal opinion as the Nye County District Attorney that you must cease and desist from conducting the proposed hearing.

The proposed hearing is improper under NRS 252.070. Mr. Vets-Kabell was an at-will employee appointed (as opposed to hired) by the District Attorney's Office and terminable at any time with or without cause. See NRS 252.070. Nye County Board of County Commissioners Resolution 95-022, and Nye County Policies and Procedures Manual Rev. 5-2017 at p. 141 ("at will" defined). As such, I have the right to revoke Mr. Vets-Kabell's appointment. See NRS 252.070.

Earlier this year, Mr. Vets-Kabell asserted under oath that he was an "at will" employee when he gave sworn testimony that his position as Deputy DA did not afford him due process protections against termination of employment. Now he is contradicting his own prior sworn testimony and falsely claiming that he did have such protections.

Please confirm via e-mail no later than 4:00 p.m. on Thursday, September 26, 2019 that you have vacated the proposed hearing regarding Mr. Vets-Kabell.

Sincerely,

CHRIS ARMBUR
NYE COUNTY DISTRICT ATTORNEY
CRambler@co.nye.nv.us
Peterson Office: 920 E. State Avenue
Pahrump, Nevada 89009
Phone: 775-751-3248
Fax: 775-751-4229
Tonopah Office: 101 Rader Road
Tonopah, Nevada 89069
Phone: 775-462-8106
Fax: 775-462-8119

NYE COUNTY DISTRICT ATTORNEY COMPLAINTS

This communication is the one by the District Attorney and contains information that may be privileged, confidential or otherwise exempt from public release under the Nevada Public Access Law. It is not to be distributed outside the Nye County District Attorney's Office. If you are not a member of the Nye County District Attorney's Office, you should not disseminate this information. If you are a member of the Nye County District Attorney's Office, you should not disseminate this information outside the Nye County District Attorney's Office. This communication is for the use of the Nye County District Attorney's Office only. It is not to be distributed outside the Nye County District Attorney's Office. If you are not a member of the Nye County District Attorney's Office, you should not disseminate this information. If you are a member of the Nye County District Attorney's Office, you should not disseminate this information outside the Nye County District Attorney's Office.

<https://mail.google.com/mail/u/0/?ik=00c93f1a38&view=pt&search=all&permmsgid=msg-fk3A1645779742485312794&siml=msg-fk3A1645779742485312794>

10/21/2019

Gmail - Appeal of dismissal

☐ [View content](#)

15K

SBN 056

<https://mail.google.com/mail/u/0/?ui=Docs31a31&view=pt&search=sa&permmsgid=msg-fx3A1645779742485312794&siml=msg-fx3A1845779742485312794>

2/2

CHRIS ARABIA
District Attorney



KIRK VITTO
Chief Deputy District Attorney
Criminal Division

MARLA ZLOTEK
Chief Deputy District Attorney
Civil Division

**OFFICE OF THE DISTRICT ATTORNEY
NYE COUNTY**

Tonopah Office
(775) 482-8166

Family Support Division
(775) 482-8117

P.O. Box 39
Pahrump, Nevada 89041
Phone: (775) 751-7080
Fax: (775) 751-4229

Pahrump Office
1520 East Basin Avenue

December 19, 2019

Laura Peters, Paralegal/Investigator
9456 Double R Blvd., Ste. B
Reno, NV 89521-5977

Dear Ms. Peters:

This is my response to Mr. Vieta-Kabell's grievance (Grievance File OBC19-1383).

1. The County had its own counsel and was more akin to an adverse party than a client.

Attorney Rebecca Bruch has been representing Nye County with respect to Mr. Vieta-Kabell's termination and other matters pertaining to employment issues. Additionally, Tim Sutton, Nye County Manager, worked for years as a Nye County Deputy DA with Mr. Vieta-Kabell. At least one County Commissioner regards Mr. Sutton as her attorney, to the point this County Commissioner recently asserted in an email that she has two attorneys for county business, County Manager Tim Sutton and Chief Deputy DA Marla Zlotek. (Exh. 1).

Ms. Bruch and Mr. Sutton have been working together on this matter, with Ms. Bruch serving as the official attorney for the County. Because I was not and am not the County's counsel with respect to this matter, the following has occurred:

a) Without asking for my opinion or informing me of Mr. Vieta-Kabell's request for an appeal hearing, the Nye County Human Resources (HR) Director scheduled an improper appeal hearing that would have unlawfully interfered with my statutorily-provided control over the appointment of Deputy DAs by enabling the County Manager to attempt to overturn my decision to terminate. This would be akin to the County Manager appointing a Deputy DA and would therefore violate NRS 252.070, which provides in relevant part, "All district attorneys may appoint deputies...." (Exh. 2). The appeal hearing was therefore not proper. I assume that Ms. Bruch and/or Mr. Sutton counseled the HR Director on whether or not to agree to an appeal hearing, but I do not know for certain. What is certain is that I was not involved in the process.

b) I did not object to Mr. Vieta-Kabell receiving a copy of my demand to cancel the hearing because I was not acting as the County's counsel. The demand was not an attorney-client or privileged communication and my actions were appropriate.

c) There was a subsequent effort by Mr. Vieta-Kabell's lawyer to obtain a monetary settlement. In an email, Mr. Vieta-Kabell told Mr. Sutton that his lawyer had reached out about seeking a money settlement. (Exh. 3). I was not notified of Mr. Vieta-Kabell's September 30,

Nye County is an Equal Opportunity Employer and Provider

2019 settlement demand on Nye County for monetary compensation. (Exh. 3). I only learned of it because it was referenced in an otherwise unrelated email in November 2019. (Exh. 4). I have had no role in possible negotiations and have not spoken to Mr. Vieta-Kabell's lawyer about it. I can only assume Mr. Vieta-Kabell's lawyer reached out to Attorney Bruch but I am certain that no one contacted me because I did not and do not represent the County in this matter.

2. There was no advice offered and so no advice that could have been limited or compromised by a conflict. Also, my actions were proper regardless.

As explained in item number 1, above, I was not acting as the County's counsel with respect to this matter and therefore provided no advice or counsel. Moreover, my actions served to protect the County and promote proper and just governance by ensuring adherence to NRS 252.070, protecting the DA's Office (a position elected by the entire County electorate), and attempting to prevent the enabling of possible improper circumvention of NRS 252.070.

3. There was no personal interest of mine that would have caused a conflict or limitation.

Mr. Vieta-Kabell provides no authority for his assertion that I was serving a personal interest by telling the HR Director to cancel the hearing that could have enabled the violation of NRS 252.070. Mr. Vieta-Kabell makes two false assertions: 1) that his termination was retaliatory and/or wrongful; and 2) that therefore I was serving a personal interest in having the proposed appeal hearing cancelled.

My actions served no personal interest. My office researched the issue and was unable to find any legal authority on point regarding this issue. My office reached out to a Lexis-Nexis research specialist and he also was unable to find any legal authority on point. The researcher surmised that the reason for the lack of authority is that the idea that I was serving a personal interest in this context is so preposterous that such an idea has probably never progressed to the point where there would be decisions or other authority on point.

The County was acting adversely to me and I told the County not to conduct an improper hearing that would have possibly enabled the County Manager to attempt to appoint Mr. Vieta-Kabell, in violation of the DA appointment provision of NRS 252.070. The County had Attorney Bruch representing it and decided to cancel the hearing. My conduct was appropriate and was an effort to prevent the County from undertaking an improper and lawless action against the District Attorney's Office.

4. Mr. Vieta-Kabell was not entitled to Due Process regarding his termination.

NRS 252.070 provides in pertinent part as follows:

1. All district attorneys may appoint deputies, who are authorized to transact all official business relating to those duties of the office set forth in NRS 252.080 and 252.090 to the same extent as their principals and perform such other duties as the district attorney may from time to time direct. The appointment of a deputy district attorney must not be construed to confer upon that

deputy policymaking authority for the office of the district attorney or the county by which the deputy district attorney is employed.

6. In a county whose population is 700,000 or more, deputies are governed by the merit personnel system of the county.

Under NRS 252.070(1), District Attorneys have the power and authority to appoint their deputies. The County Manager has no role in the process. In NRS 252.070(6), the legislature specifically included large counties as having their deputies governed by the respective county merit personnel systems and specifically did not include smaller counties (such as Nye) as having their deputies governed by their respective county personnel systems. The legislative history suggests that the omission of small counties was intentional and the law contemplated excluding the smaller counties. The EMRB has expressed this opinion. (Exh. 5, p. 7, fn. 2).

NRS 252.070(1) and 252.070(6) distinguish Deputy District Attorneys from other county employees. Deputy DAs are unique because the District Attorney has the sole power and authority to appoint and the law only includes Deputy DAs from large counties (population 700,000 or more) in the county merit personnel system.

In short, Mr. Vieta-Kabell was an at-will appointed deputy and not entitled to Due Process protections or for-cause protections regarding termination. Thus, there was no improper deprivation of Due Process and the county regulations cited by Vieta-Kabell in his grievance did not apply to him.

It is also important to note that a State Bar grievance is not a proper method for resolving an employment dispute. Given his disagreement with my actions, Mr. Vieta-Kabell could have filed an action with the EMRB and could have filed a civil suit. Mr. Vieta-Kabell instead filed a Bar grievance and sought a monetary settlement!

Mr. Vieta-Kabell is aware that he did not have Due Process protections regarding termination and testified accordingly and under oath before the EMRB on April 9, 2019:

I simply would like to enjoy some of the benefits of being a represented classification like due process in termination. You know, it's basically the wheel's not broke. I don't want to fix it. I just want to be part of it. Up closer, you know, more deeply entrenched part of it than I have been previously. [Bold added.]

(Exh. 6, (section numbered as p. 103), ln. 20-25).

Mr. Vieta-Kabell failed to disclose his sworn testimony before the EMRB to the State Bar in his grievance and instead has asserted to the State Bar the complete opposite of his prior sworn testimony.

5. Mr. Vieta-Kabell was provided with an extensive list of reasons for his termination. He was not terminated wrongfully or as retaliation.

On September 26, 2019, Mr. Vieta-Kabell requested a written statement from me regarding the reasons for his termination. Without waiting for my response, Mr. Vieta-Kabell sent his demand for money to the County Manager on September 30, 2019. (Exh. 3). On October 11, 2019, I provided a statement detailing 12 reasons for the termination. (Exh. 7). I stand by my statement of reasons and my actions were proper.

It is worth noting that Mr. Vieta-Kabell falsely claims in his grievance that I designated him as the so-called “ringleader” of his unionization efforts. At the EMRB hearing on April 9, 2019, it was Mr. Vieta-Kabell’s lawyer who designated Mr. Vieta-Kabell as the “ringleader.” (Exh. 6, numbered as p. 98, ln. 12-15). I did not terminate his employment as retaliation. The termination also was not wrongful.

Regardless, a State Bar grievance is not a proper method for resolving an employment dispute. Mr. Vieta-Kabell could have filed an action with the EMRB and/or filed a civil suit. Instead, Mr. Vieta-Kabell filed a bar grievance just after demanding money from the County.

6. I did not violate NRPC 8.4(e).

Mr. Vieta-Kabell alleges that my actions were a violation of NRPC 8.4(e). However, he never cites to any facts that show that it was either stated or implied by me that I had an ability to influence a government agency or to achieve a result by means that violate the NRPC. The rule reads as follows:

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice;
- (e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

I did nothing improper. I was not acting as counsel for the County with respect to issues arising from Mr. Vieta-Kabell’s termination. There was no improper counsel given, no improper service to my own personal interests, and no improper deprivation of Due Process protections. I did not terminate Mr. Vieta-Kabell’s employment wrongfully or as retaliation. I did not state or imply an ability to influence improperly or achieve results by means that violate the NRPC.

One would expect a more honest effort from a Nevada lawyer who is alleging an NRPC violation (particularly if the lawyer works for the State Bar at the time of filing – see Conclusion, 4th paragraph, immediately below).

CONCLUSION

Mr. Vieta-Kabell's grievance is completely without merit. My actions were appropriate both in terminating Mr. Vieta-Kabell's employment and in telling the Nye County HR Director (in a matter where the County had outside counsel and was akin to a party adverse to the DA's Office) to cancel an improper hearing that would have enabled the County Manager to make an improper attempt to compel the appointment of a Deputy DA, in violation of NRS 252.070.

I am gravely concerned by Mr. Vieta-Kabell's conduct in pursuing this grievance. He has taken his disagreement over my decision to terminate his employment and turned it into an improper, frivolous, and deceptive Bar grievance. He has omitted key information known to him and has intentionally misled the State Bar.

I am also concerned that Mr. Vieta-Kabell has filed a baseless claim of an ethical rules violation to buttress his attempt to extort a settlement from Nye County.

Upon information and belief, and although I am unable to verify the assertion to follow, I believe that Mr. Vieta-Kabell was working at the State Bar as a Bar Counsel during the period from early- or mid-October of 2019 until some point in November of 2019. The State Bar received Mr. Vieta-Kabell's grievance on either October 23 or October 28, 2019. It appears that Mr. Vieta-Kabell may have had a direct personal interest or conflict in this grievance because he was apparently employed at the State Bar when he filed the grievance. His grievance is not in the form of a letter and looks as if it could be an internal document.

Finally, I would respectfully request that you resolve this grievance on an expedited basis. I am a District Attorney and must answer to the 40,000+ citizens of Nye County. Though I continue to do my best for my constituents, I worry that working under the threat of Bar discipline for making a routine, proper decision could eventually exert a chilling effect on my ability to make decisions without concern about facing additional false charges.

Sincerely,



Chris Arabia
NYE COUNTY DISTRICT ATTORNEY

Exhibit 1

Exhibit 1

Bradley Richardson

From: Maria Zlotek
Sent: Wednesday, December 4, 2019 3:38 PM
To: Bradley Richardson
Subject: FW: FOIA request

From: Arnold Knightly <aknightly@co.nye.nv.us>
Sent: Friday, November 1, 2019 3:19 PM
To: Lorinda Wichman <lawichman@gmail.com>
Cc: Timothy Sutton <tsutton@co.nye.nv.us>; Marla Zlotek <mzlotek@co.nye.nv.us>
Subject: RE: FOIA request

Commissioner,

I will be working with Marla before I release any emails involving the DA's office.

Arnold M. Knightly
PIO, Nye County

From: Lorinda Wichman <lawichman@gmail.com>
Sent: Friday, November 1, 2019 3:17 PM
To: Arnold Knightly <aknightly@co.nye.nv.us>
Cc: Timothy Sutton <tsutton@co.nye.nv.us>; Marla Zlotek <mzlotek@co.nye.nv.us>
Subject: FOIA request

Wait just a minute. My communications with my attorney (Marla & Tim) are privileged. Talk to them both before sharing my emails with anyone. The Text message is also between Tim and I. He is an attorney, formerly a DDA, I still consider him in the same way and much more.

Thank you

Lorinda Wichman
Nye County Commissioner
775-761-1626

Exhibit 2

Exhibit 2

Christopher R. Arabia

From: Danelle Shamrell
Sent: Tuesday, September 24, 2019 9:43 AM
To: Michael Vieta-Kabell; Timothy Sutton; Christopher R. Arabia
Subject: RE: Appeal of dismissal
Attachments: Appeal of Dismissal.pdf

All,

The appeal process requires a hearing which I have scheduled for October 9th starting at 1:30 in the Admin Conference room. Please provide a list of witnesses (if any) and any documentary evidence you intend to rely on at least five business days before the hearing.

I appreciate your reply to this email confirming your ability to meet on the referenced day.

Thank you,

D. Shamrell

Danelle Shamrell
Director of Human Resources
775-482-7242 Direct Line
Tonopah

PO Box 3400; 101 Radar Road
Tonopah, NV 89049
775-293-1707 Mobile
775-751-6309 Fax

2100 E. Walt Williams Drive, #110
Pahrump, NV 89048
775-751-6303 Direct Line
Pahrump
775-751-6309 Fax

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From: Michael Vieta-Kabell <mvkabell@gmail.com>
Sent: Monday, September 23, 2019 2:57 PM
To: Danelle Shamrell <dshamrell@co.nye.nv.us>; Timothy Sutton <tsutton@co.nye.nv.us>; Christopher R. Arabia <crarabia@co.nye.nv.us>; RYANNE GOTT <rgott@co.nye.nv.us>
Subject: Appeal of dismissal

I am hereby filing the attached appeal of my dismissal.

--

Michael Vieta-Kabell

Exhibit 3

Exhibit 3

HUNTLEY LAW

Brent D. Huntley, Esq.
6725 S. Eastern Ave., #200
Las Vegas, NV 89123
(702) 849-2598
brent@huntleynv.com

September 30, 2019

Via Email
Tim Sutton
Nye County Manager
tsutton@co.nye.nv.us

Re: Confidential Settlement offer for Vieta-Kabell Dismissal

Dear Mr. Sutton,

As discussed Friday, we are prepared to make a settlement offer to resolve the claim against Nye County for wrongful termination, retaliation and other matters prior to litigation. Should litigation be required, our demand will drastically increase to fully compensate Mr. Vieta-Kabell for his wrongful dismissal. As discussed below, we believe this settlement offer is more than fair given the clear path to success and likelihood of recovering far greater in damages.

Mr. Vieta-Kabell is willing to accept one hundred and eighty (180) days of pay in lieu of notice, to include all benefits, PERS contribution, health insurance, continued accrual of all leave, etc., with the purchase of an additional three (3) years of service credit in PERS by Nye County on behalf of Mr. Vieta-Kabell. As I mentioned on our telephone call, Nye County provides 180 days for people such as Mr. Vieta-Kabell that have served 10 years in other positions. I believe that time frame was chosen as a direct reflection of the difficulty for someone with such experience to find and obtain a comparable position and benefits with another agency. Moreover, there is a strong likelihood such a position would not include the same PERS benefits, which would lead to significant damages.

This settlement is requested, among other reasons, due to the retaliatory nature of Mr. Vieta-Kabell's termination. Mr. Vieta-Kabell was actively in the process of unionizing with other Deputy District Attorneys in the Nye County District Attorney's Office when he was terminated without cause. The request to unionize is currently pending with the employee management relations board under EMRB case number 2018-012. It is no secret among many people I have talked to in several circles that Mr. Arabia is actively removing anyone that was involved in the effort to unionizing and changing terms of employments in an effort to make unionizing impossible.

HUNTLEY LAW

Brent D. Huntley, Esq.
8725 S. Eastern Ave., #200
Las Vegas, NV 89123
(702) 849-2398
brent@huntleylv.com

Furthermore, Mr. Vieta-Kabell's termination was clearly done with no regard to the law and due process, as set forth in well-established case law, the Nye County Code Chapter 2.38, the Nye County Personnel Policy Manual Section 11, and the Nevada Revised Statutes Chapter 245.

Nye County Code 2.38.040 clearly assigns the authority and responsibility of promulgating, maintaining, and enforcing the Nye County Merit Based Personnel System to the Nye County Manager. However, all personnel decisions in the case of Mr. Vieta-Kabell appear to have been made by District Attorney Arabia without respect to the Merit Based Personnel System. Furthermore, in the aftermath of this termination Nye County acquiesced to District Attorney Arabia further interfering with Mr. Vieta-Kabell's right to due process when he directed Nye County Human Resources to cancel the appeal hearing that Mr. Vieta-Kabell requested, in violation of County Code and Policy, as well as the Nevada Rules of Professional Conduct 1.7(a)(2) and 8.4(d)&(e).

Mr. Vieta-Kabell believes this settlement is reasonable in light of the 180-day standard notice/pay in lieu of notice offered to employees of the county who have been with the county in excess of 10 years under NCC 2.38.030(E)(3). Mr. Vieta-Kabell is also aware that former employee Ronni Boskovich, who had worked as a Deputy District Attorney for less than 2 years, was given 60 days of severance as opposed to the 1 month severance afforded to Mr. Vieta-Kabell, which further evidences the retaliatory nature of Mr. Vieta-Kabell's termination.

This settlement seeks to mitigate damages to Mr. Vieta-Kabell in the form of lost wages, lost retirement credit in the NV PERS system, and further seeks to mitigate damages to Mr. Vieta-Kabell's dependents, specifically Mr. Vieta-Kabell's autistic child. Prior to Mr. Vieta-Kabell's termination, District Attorney Arabia was made personally aware by Mr. Vieta-Kabell that one of his dependent children suffered from developmental delays and autism. By terminating health care coverage for Mr. Vieta-Kabell and by consequence Mr. Vieta-Kabell's disabled son, Mr. Vieta-Kabell's disabled son is exposed to potential damage in the form of disrupted behavioral, occupations, speech-language pathology, and physical therapy services during the developmental phase of his childhood, which may severely impact his long term functioning. Damages from such a result would be considerable.

While we recognize the County is in a tough position dealing with an elected official who appears to have no willingness to follow policies, procedures, law or just good practices in general. Nevertheless, the County is bound to respect the rights of its employees and ensure they treated fairly and, in this case, with due process. This settlement offer is a more-than fair compromise of

HUNTLEY LAW

Brent D. Huntley, Esq.
4725 S. Eastern Ave. #200
Las Vegas, NV 89123
(702) 849-2398
brent@huntleynv.com

the significant damages Mr. Vieta-Kabell has and will continue to incur due to his unlawful termination. This offer will expire on October 15, 2019 or the filing of a complaint against the County, whichever occurs sooner.

Please feel free to contact me to discuss any concerns or questions you may have regarding this settlement offer.

Sincerely,

Huntley Law

A handwritten signature in dark ink, appearing to read "Brent D. Huntley", with a stylized flourish extending to the right.

Brent D. Huntley, Esq.

Exhibit 4

Exhibit 4

Christopher R. Arabia

From: Timothy Sutton
Sent: Wednesday, November 20, 2019 9:31 AM
To: Christopher R. Arabia; Nick Crosby
Cc: Rebecca Bruch
Subject: FW: Amended Appeal & Hearing

Here's what I got back from Mike. Let me know how you'd like to proceed. I haven't seen any new requests for settlement since Becky denied the first one. Has there been something recent?

From: Michael Vieta-Kabell <mvkabell@gmail.com>
Sent: Wednesday, November 20, 2019 8:43 AM
To: Timothy Sutton <tsutton@co.nye.nv.us>
Cc: brent huntley <brent@huntleynv.com>
Subject: Re: Amended Appeal & Hearing

Unfortunately I'm starting for Washoe DA on 12/2 and then I assume I am going to be subject to some prohibition period on taking leave as is typical with new employment. Additionally I am not certain what the court calendars and case load demands will allow for as far as taking time. Because I need to get all of that confirmed it may be a while before we can get a date locked down. On the up side I am still hopeful that we can settle all of this amicably. I know that Brent reached out regarding negotiations again recently and we are still awaiting a response.

On Tue, Nov 19, 2019 at 5:13 PM Timothy Sutton <tsutton@co.nye.nv.us> wrote:

Hi Mike,

Is there any way we can do this sooner? We can still convene a special meeting if necessary. I'm asking because the beginning of the year is typically pretty busy and our agendas have been going longer and longer. I don't know how long your item will take but I'm guessing about 1-1.5 hours which is substantial when trying to add it to an already packed agenda. What are your thoughts on having a special meeting for just this item during the week of December 2-8 (except 12/3)? That's typically a pretty slow time administratively and would allow everyone time to enjoy the holidays without needing to prepare or having this hearing looming. Please let me know if you are amenable.

Thanks,

Tim

Exhibit 5

Exhibit 5

FILED

JUL 15 2019

**STATE OF NEVADA
E.M.R.B.**

**STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD**

**NYE COUNTY MANAGEMENT
EMPLOYEES ASSOCIATION,**

Complainant,

v.

NYE COUNTY,

Respondent.

Case No. 2018-012

PANEL E

ORDER

ITEM NO. 844

On May 29, 2019, this matter came before Panel E of the State of Nevada, Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Government-Management Relations Act (the "Act"), NAC Chapter 288 and NRS Chapter 233B. The Board held a 2-day administrative hearing on this matter on April 9-10, 2019¹.

The Collective Bargaining Agreement ("CBA") between Complainant and Respondent for which Complainant seeks accretion of the Deputy District Attorneys ("DDAs") provides that the following classifications are covered by the CBA: (a) Assistant Planning Director; (b) Database Manager; (c) Director, Emergency Management Services; (d) Director, Management Information System; (e) Director, NWRPO; (f) Director, Planning; (g) Director, Public Works; (h) Director, Human Services; (i) Engineer (In Training); (j) Geoscience Manager; (k) Geoscientist I; (l) Geoscientist II; (m) Geoscientist III; (n) Geotechnical Representative; (o) Manager, Facility Operations; (p) Manager, Human Services; (q) Network Engineer; (r) Principle Planner; (s) Public Information Officer; (t) Road Superintendent; and (u) Utilities Superintendent.

¹ At the time of the hearing and deliberation on the matter, the name of the agency was the Local Government Employee-Management Relations Board, and the name of the Act was the Local Government Employee-Management Relations Act. Both were changed with the enactment of SB135 on June 12, 2019.

1 The parties stipulated that that none of the classifications identified in the CBA (Article 4) share
2 the same duties as a DDA. The parties also stipulated that they "don't swap job duties" in relation to
3 whether is interchange between the classifications and the DDAs.

4 Between February and April 2018, the DDAs communicated to Respondent their desire to be
5 included in the NCMEA bargaining unit. Ultimately, a Settlement Agreement and MOU were drafted.
6 The proposed Settlement Agreement and MOU were placed on the Board of County Commissioners'
7 agenda for action in November 2018. While the item was initially approved, it was later moved and
8 approved for reconsideration. In January 2019, the motion to vote on the item did not receive a second,
9 and therefore died for a lack thereof.

10 DISCUSSION

11 NRS 288.170 provides, in pertinent part:

12 1. Each local government employer which has recognized one or more employee
13 organizations shall determine, after consultation with the recognized organization or
14 organizations, which group or groups of its employees constitute an appropriate unit or
15 units for negotiating. The primary criterion for that determination must be the community
16 of interest among the employees concerned.

17 ...

18 5. If any employee organization is aggrieved by the determination of a bargaining unit,
19 it may appeal to the Board. Subject to judicial review, the decision of the Board is
20 binding upon the local government employer and employee organizations involved. The
21 Board shall apply the same criterion as specified in subsection 1.

22 NRS 288.028 further defines a "bargaining unit" as "a group of local government employees
23 recognized by the local government employer as having sufficient community of interest appropriate for
24 representation by an employee organization for the purpose of collective bargaining."

25 A community of interest includes, among other considerations: similarities in duties, skills,
26 working conditions, job classifications, employee benefits, and the amount of interchange or transfer of
27 employees, integration of an employer's operations and supervision of employees. *Nye County Law*
28 *Enforcement Ass'n v. Nye County*, Item No. 805, Case No. A1-046123 (2015); *Int'l Brotherhood of*
Electrical Workers Local 1245 v. Truckee Meadows Water Auth., Case No. 2017-002, Item No. 825
(2017). The Board also considers factors such as the desires of the affected employees, geographic
proximity, common objectives in providing services, personnel policy, and the frequency of contact

1 among the employees. *The Douglas County Professional Ed. Ass'n v. The Douglas County Sch. Dist.*,
2 Item No. 230, Case No. A1-045442 (1989); *Int'l Brotherhood of Electrical Workers Local 1245*, Case
3 No. 2017-002, Item No. 825 (2017).

4 "Because this is an area where special expertise is needed, the Board has exceptionally broad
5 discretion in determining an appropriate unit." *Pac. Sw. Airlines v. N.L.R.B.*, 587 F.2d 1032, 1037 (9th
6 Cir. 1978).

7 **Similarity in duties, skills, working conditions as well as geographic proximity, common**
8 **objectives in providing services, and the frequency of contact among employees:**

9 On balance, the Board finds these factors cut against a finding of a community of interest.

10 The parties stipulated that that none of the classifications identified in the CBA (Article 4) share
11 the same duties as a DDA. The evidence also established this includes their specific actual job duties.
12 The evidence further clearly established that the DDAs do not have a similarity in skills with the
13 bargaining unit at issue. Darrin Tuck, Nye County Public Works Utility Superintendent and President
14 of the NCMEA, admitted during the hearing that the DDAs do not share the same skills as the
15 bargaining unit employees. The skills required to be a DDAs are not similar to any of the job
16 classifications listed above (e.g., public works, engineer, geoscientists, geotechnical representative,
17 facilities operations, road superintendent, utilities superintendent). None of these classifications require
18 admission to the State Bar of Nevada, nor do any of these classifications prosecute cases before the
19 Court. *See also, e.g., Pac. Sw. Airlines*, 587 F.2d at 1042 ("The most reliable indicium of common
20 interests among employees is similarity in their skills, duties, and working conditions.").

21 Further, as noted by the Board, although the position of NWPRO Director lists a preference for
22 an advanced degree, this was a preference and not a requirement as in the DDA classification. *But see*
23 *Nye County Law Enforcement Ass'n v. Nye County*, Case No. A1-046123 (2015) (noting that all
24 employees are peace officers and have been certified by the Peace Officers and Standards Training
25 Commission and each of these employees undergo the same or similar training as required by the
26 Commission).

27 The testimony also established that the DDAs do not work side-by-side with the bargaining unit
28 employees, except for a few isolated incidents. The DDAs were only able to identify a handful of times

1 when they had an opportunity to interact or work with the bargaining unit employees. For example, as
2 to when the DA's Office worked with the Director of Planning to obtain a history of a sign placement as
3 well as a general reference by a DDA who worked with the Public Information Officer to provide
4 information for press releases.

5 In *Int'l Brotherhood of Electrical Workers Local 1245 v. Truckee Meadows Water Auth.*, Case
6 No. 2017-002, Item No. 825 (2017), the Water Quality positions worked side-by-side with members of
7 the existing Local 1245 bargaining unit, in a functionally interdependent fashion - without working as a
8 team, these two groups of employees could not fulfill their joint obligation to ensure that water quality
9 meets required standards. However, here, there was seldom similarity in working conditions, and
10 infrequency in contact. While Complainant argued the DDA and the bargaining unit share a common
11 objective of generally providing services to the citizens of Nye County, this expansive generality does
12 not hold much water. See *contra, e.g., Truckee Meadows Water Auth.*, Case No. 2017-002, Item No.
13 825.

14 Finally, in terms of geographic proximity, while the building which houses the DDAs is on the
15 same property as one of the classifications, the majority of the other positions are located at two other
16 complexes, 1 to 3 miles away.

17 **Integration of an employer's operations, amount of interchange or transfer of employees,**
18 **and supervision of employees:**

19 The Board finds these factors cut against a finding of a community of interest.

20 As indicated, the parties also stipulated that bargaining unit employees "don't swap job duties"
21 with the DDAs in relation to whether there is interchange. Moreover, the evidence was undisputed that
22 none of the bargaining unit members share the same supervisory hierarchy or common supervision as
23 the DDAs. The DDAs report to and are supervised by the DA. None of the DDAs report to the County
24 Manager.

25 In *Truckee Meadows Water Auth.*, however, Water Quality employees were part of the larger
26 Water Quality and Operations department, which had common supervision by Andy Gebhardt, the
27 Operations and Water Quality Director. Water Quality employees were directly supervised by Kelli
28 Burgess, the Water Quality Supervisor, who in turn worked under Mr. Gebhardt. So although they have

1 a different immediate supervisor, the Water Quality group exists within the same chain of command.
2 Moreover, credible testimony was presented that the Water Quality Department itself had weekly
3 meetings not only with Water Quality Supervisor Burgess but also with Operations Supervisor
4 Raymond and Director Gebhardt.

5 Next, in *Truckee Meadows Water Auth.*, the Board found that the amount of interchange or
6 transfer of employees cut against a finding of community of interest as the Water Qualify Employees
7 could not do that same job as those in the existing bargaining unit. It is undisputed in this case that the
8 same holds true. *But see Nye County Law Enforcement Ass'n v. Nye County*, Case No. A1-046123
9 (2015) (noting that all employees work closely with the Sheriff's deputies, JPOs are dispatched by the
10 Sheriff's Office, and they share interview and detention rooms).

11 **Similarity in employee benefits, personnel policy and employee choice:**

12 The Board finds these factors cut in favor of a finding of a community of interest. The DDAs
13 pay scale is based upon the pay scale identified in the NCMEA, and they have the same personnel
14 policy that governs all employees of the County, along with sharing the same benefits.²

15 The testimony presented was also in favor of accretion from that of those seeking to be accreted
16 into the existing bargaining unit.

17 **Request to be represented by Local 14 and Equitable Estoppel**

18 Complainant filed their Complaint with this Board seeking a finding that the DDAs share a
19 community of interest with the other bargaining eligible supervisors and accretion into the NCMEA.
20

21
22 ¹ While not determinative here, the Board notes however that in NRS 252.070(6), the Legislature
23 afforded a merit personnel system (which would encompass a just cause standard) to DDAs who are
24 employed by a county with a population of at least 700,000. The legislative history of the bill shows
25 there was not an intent to extend such rights to DDAs in the smaller counties (*i.e.*, Graham stated it
26 would not be appropriate for smaller counties in connection with Senator Raggio's concern related to
27 the district attorney of a county historically had the right to appoint and retain the DDAs). Furthermore,
28 NRS 288.140(4)(c) precludes a deputy district attorney assigned to a "civil law division, department or
agency" from being a member in an employee organization. Testimony at the hearing established that
the DDAs are sometimes required to perform both criminal and civil duties. One job classification
expressly covered civil work. While the majority of the DDAs indicated they were assigned to the
criminal division, the DA's office has a civil division and the DA has the authority to assign DDAs to
that department as needed.

1 bargaining unit. The Second Amended Notice of Hearing stated the issues to be addressed at the
2 hearing were:

3 **Complainants Statement of Issues:** Whether the criminal prosecutors employed
4 by the Nye County District Attorney's Office should be accreted into and
5 represented by the Nye County Management Employees Association, or
6 alternatively be forced to form their own bargaining unit.

7 **Respondent's Statement of Issues:** Do the Criminal Deputy District Attorneys
8 share a community of interest with the other bargaining eligible supervisors
9 employed by the County, despite the numerous distinctions between the two
10 groups.

11 Neither party filed an objection to the said notice. Respondent, in its Supplement to Pre-Hearing
12 Statement, requested that in the event that the Board concludes that there is not an appropriate or
13 sufficient community of interest, then the criminal prosecutors wish this Board to recognize Teamsters
14 Local 14 as their exclusive bargaining representative.

15 The Board finds it would be inappropriate to do so at this stage.³ Not only did Complainant not
16 include this request in its Complaint, nor did they object to the Second Amended Notice of Hearing, the
17 request fails to comply with the statutory requirements. NRS 288.160 requires an employee organization
18 to present a copy of its constitution and bylaws, if any; a roster of its officers, if any, and representatives;
19 and a pledge in writing not to strike against the local government employer under any circumstances. If
20 an employee organization, at or after the time of its application for recognition, presents a verified
21 membership list showing that it represents a majority of the employees in a bargaining unit, and if the
22 employee organization is recognized by the local government employer, it shall be the exclusive
23 bargaining agent of the local government employees in that bargaining unit.

24 The Board was not presented with sufficient evidence that Complainant met all of the
25 requirements above. See also NAC 288.143 ("The local government employer may challenge the
26 sufficiency of the application for recognition by filing a petition, in the form of a pleading, with the

27 ³ NRS 233B.121(1) and (2) require parties in contested cases to receive reasonable notice of matters to
28 be litigated. Failure to comply with the statutory notice requirements of the APA results in an invalid
order which must be set aside. *Coury v. Whittlesea-Bell Luxury Limousine*, 102 Nev. 302, 308, 721
P.2d 378 (1986). The APA further restricts agency discretion to rule only on matters officially noticed.
NRS 233B.121(9). The pleadings serve as the "outer measure of materiality". See also *Laubs v. City of*
Victorville, 163 Cal. App. 4th 1242, 1253, 78 Cal. Rptr. 3d 372, 381-82 (2008); *Hutton v. Fid. Nat'l*
Title Co., 213 Cal. App. 4th 486, 493, 152 Cal. Rptr. 3d 584, 590 (2013) (stating that "moving party
need not refute liability on some theoretical possibility not included in the pleading").

1 Board within 10 days after receipt of the application.”). If Complainant feels this is in error,
2 Complainant should file a petition for rehearing as provided in NAC 288.364. The Board also notes that
3 NRS 288.160 is plain and unambiguous that if the employee organization presents a verified
4 membership list and is recognized, Board involvement is generally not required.

5 In the same vein, for the first time, Complainant in its Fourth Pre-Hearing Statement argued that
6 equitable estoppel applies to the current matter. Preliminarily, the Board was inclined to not rule on this
7 issue because it was not asserted in the Complaint, due to the late nature of its presentation, and because
8 the Board determines here only that the DDAs do not share a community of interest with the bargaining
9 unit.

10 Regardless, the Board finds equitable estoppel is not warranted in this case and was not
11 established. Complainant argues that the County knew that there was an issue as to whether the DDAs
12 should be part of the NCMEA bargaining unit or their own bargaining unit; intentionally led the union to
13 believe that it would permit the DDAs into the bargaining unit by entering into negotiations with union;
14 the union mistakenly believed that the County was bargaining in good faith and that Mark Ricciardi had
15 authority to make a deal; and the union relied to its detriment upon such representation by giving up the
16 Director of ER Management Service positions in return for the DDAs, and agreeing to continue the
17 hearing of this matter which was originally set for January 9, 2019.

18 In *Red Coats, Inc.*, 328 NLRB 205 (1999), the NLRB found that the Respondent was equitably
19 estopped from challenging the appropriateness of the units when it extended voluntary recognition. The
20 NLRB identified the essential elements of equitable estoppel as knowledge, intent, mistaken belief, and
21 detrimental reliance. However, here there was no voluntary recognition. *See also Complaint*, at ¶ 7
22 (“Despite the request for recognition as part of the NCMEA bargaining unit, Nye County has
23 continuously failed to take timely action to recognize the NCMEA as the exclusive bargaining
24 representative of the Criminal Deputy District Attorneys.”); *but see Red Coats, Inc.*, 328 NLRB 205
25 (1999) (“By voluntarily recognizing the Union, and then insisting in negotiations that the parties bargain
26 on a single-location basis, the Respondent induced the Union to believe that the Respondent would forgo
27 any challenge to the Union’s status based on a unit appropriateness argument.”).

28 ///

1 Moreover, it was credibly established that the MOU required approval by the County
2 Commission which was not received, including the removal of the director of the EMS position and
3 addition of the DDAs assigned to the criminal division. A commissioner made a motion to put this off
4 until there was a full board at the next meeting and allow her time to check out a concern that came to
5 her on the phone. This motion passed. At a later meeting, the motion failed for lack of a second. It was
6 further stipulated that because the MOU changes the CBA, the statute requires approval for the MOU.
7 The Board of County Commissioners ultimately did not approve the settlement agreement. Testimony
8 established that to this day, the board has taken no action to either recognize the DDAs as part of the
9 NCMEA. *See also Kern, Inyo & Mono Crys. Bldg. & Constr. Trades Council & Golden Queen Mining*
10 *Co., LLC., No. 31-CE-129697, 2015 WL 8138319 (Dec. 7, 2015) ("In this narrow line of cases*
11 *[including Red Coats, Inc., Alpha Associates, and R.P.C., Inc.] involving withdrawal of recognition*
12 *based upon a Union merger issue two years prior, the untimely challenge of a voluntary recognition, and*
13 *an RC petition filed contrary to a Union's agreement, the Board held that in these narrow circumstances*
14 *estoppel may apply. The facts of those cases are inapposite here.); Oak Harbor Freight Lines, Inc. v.*
15 *Nat'l Labor Relations Bd., 855 F.3d 436, 443 (D.C. Cir. 2017), cert. denied sub nom. Oak Harbor*
16 *Freight Lines, Inc. v. N.L.R.B., 138 S. Ct. 977, 200 L. Ed. 2d 246 (2018). In the same vein, equitable*
17 *estoppel is not warranted in this matter. Furthermore, the NLRB also noted that "[t]he benefit received*
18 *here by the Respondent was the avoidance of a companywide union organizing campaign and the*
19 *stabilization of labor relations." Red Coats, Inc., 328 NLRB 205 (1999). However, detrimental reliance*
20 *was not established here as indicated above. See also, e.g., Shepard Exposition Servs., Inc., No. 11-CA-*
21 *20859, 2006 WL 1666698 (June 13, 2006); Raymond Interior Sys. & Operative Plasterers & Cemen*
22 *Masons Int'l Ass'n, Local Union 200, 357 NLRB 2174, 2188 (2011) ("Estoppel will not apply where*
23 *there is no reasonable reliance and where there is no harm.").*

24 * * *

25 While the Board generally favors larger wall-to-wall units and a broad interpretation of
26 community of interest, on balance, the Board finds the factors do not cut in favor of accretion in this
27 case. The DDAs and the bargaining unit did not share similar duties, skills or working conditions, and
28 their contact was infrequent. Interchange or transfer among the DDAs and the bargaining unit was

1 lacking and it was uncontroverted that there is no common supervision. *See also, e.g., Pac. Sw.*
2 *Airlines*, 587 F.2d at 1042 ("there has been some interchange between the disputed employees and unit
3 members, but it has been sporadic and infrequent.").

4 Finally, based on the facts in this case and the issues presented, the Board declines to award
5 costs and fees in this matter.

6 FINDINGS OF FACT

7 1. If any of the foregoing findings is more appropriately construed as a conclusion of law, it
8 may be so construed.

9 2. The CBA between Complainant and Respondent for which Complainant seeks accretion
10 of the DDA provides that the following classifications are covered by the CBA: (a) Assistant Planning
11 Director; (b) Database Manager; (c) Director, Emergency Management Services; (d) Director,
12 Management Information System; (e) Director, NWRPO; (f) Director, Planning; (g) Director, Public
13 Works; (h) Director, Human Services; (i) Engineer (In Training); (j) Geoscience Manager; (k)
14 Geoscientist I; (l); Geoscientist II; (m) Geoscientist III; (n) Geotechnical Representative; (o) Manager,
15 Facility Operations; (p) Manager, Human Services; (q) Network Engineer; (r) Principle Planner; (s)
16 Public Information Officer; (t) Road Superintendent; and (u) Utilities Superintendent.

17 3. The parties stipulated that that none of the classifications identified in the CBA (Article
18 4) share the same duties as a DDA.

19 4. The parties also stipulated that they "don't swap job duties" in relation to whether is
20 interchange between the classifications and the DDAs.

21 5. Similarity in duties, skills, working conditions as well as geographic proximity, common
22 objectives in providing services, and the frequency of contact among employees cut against a finding of
23 a community of interest.

24 6. None of the classifications identified in the CBA (Article 4) share the same duties as a
25 DDA including their specific actual job duties.

26 7. DDAs do not have a similarity in skills with the bargaining unit at issue.

27 8. DDAs do not share the same skills as the bargaining unit employees.

1 9. The skills required to be a DDA are not similar to any of the job classifications listed
2 above (e.g., public works, engineer, geoscientists, geotechnical representative, facilities operations, road
3 superintendent, utilities superintendent).

4 10. None of these classifications require admission to the State Bar of Nevada, nor do any of
5 these classifications prosecute cases before the Court.

6 11. Although the position of NWPRO Director lists a preference for an advanced degree, this
7 was a preference and not a requirement as in the DDA classification.

8 12. DDAs do not work side-by-side with the bargaining unit employees, except for a few
9 isolated incidents.

10 13. The DDAs were only able to identify a handful of times when they had an opportunity to
11 interact or work with the bargaining unit employees.

12 14. There was seldom similarity in working conditions and infrequency in contact.

13 15. While Complainant argued the DDA and the bargaining unit share a common objective
14 of generally providing services to the citizens of Nye County, this expansive generality does not hold
15 much water.

16 16. Integration of an employer's operations, amount of interchange or transfer of employees,
17 and supervision of employees cut against a finding of a community of interest.

18 17. The evidence was undisputed that none of the bargaining unit members share the same
19 supervisory hierarchy or common supervision as the DDAs.

20 18. The DDAs report to and are supervised by the DA.

21 19. None of the DDAs report to the County Manager.

22 20. Similarity in employee benefits, personnel policy and employee choice cut in favor of a
23 finding of a community of interest.

24 21. The DDAs pay scale is based upon the pay scale identified in the NCMEA, and they
25 have the same personnel policy that governs all employees of the County, along with sharing the same
26 benefits.

27 22. DDAs are sometimes required to perform both criminal and civil duties.

28 23. One job classification expressly covered civil work.

1 24. While the majority of the DDAs indicated they were assigned to the criminal division,
2 the DA's office has a civil division and the DA has the authority to assign DDAs to that department as
3 needed.

4 25. Complainant filed their Complaint with this Board seeking a finding that the DDAs share
5 a community of interest with the other bargaining eligible supervisors and accretion into the NCMEA
6 bargaining unit.

7 26. Neither party filed an objection to the Second Amended Notice of Hearing.

8 27. Not only did Complainant not include this request in its Complaint, they did not object to
9 the Second Amended Notice of Hearing, and thus the request fails to comply with the statutory
10 requirements.

11 28. Equitable estoppel was not asserted in the Complaint.

12 29. Between February and April 2018, the DDAs communicated to Respondent their desire
13 to be included in the NCMEA bargaining unit.

14 30. Ultimately, a Settlement Agreement and MOU were drafted.

15 31. The proposed Settlement Agreement and MOU were placed on the Board of County
16 Commissioners' agenda for action in November 2018.

17 32. While the item was initially approved, it was later moved and approved for
18 reconsideration.

19 33. A commissioner made a motion to put this off until there was a full board at the next
20 meeting and allow her time to check out a concern that came to her on the phone.

21 34. This motion passed.

22 35. At a later meeting, the motion failed for lack of a second.

23 36. There was no voluntary recognition.

24 37. The Board of County Commissioners ultimately did not approve the settlement
25 agreement.

26 38. The board has taken no action to either recognize the DDAs as part of the NCMEA.

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39. Despite the request for recognition as part of the NCMEA bargaining unit, Nye County has continuously failed to take timely action to recognize the NCMEA as the exclusive bargaining representative of the Criminal Deputy District Attorneys.

40. MOU required approval by the County Commission which was not received, including the removal of the director of the EMS position and addition of the DDAs assigned to the criminal division.

41. It was further stipulated that because the MOU changes the CBA, the statute requires approval for the MOU.

42. In January 2019, the motion to vote on the item did not receive a second, and therefore died for a lack thereof.

43. Detrimental reliance was not established.

CONCLUSIONS OF LAW

1. The Board is authorized to hear and determine complaints arising under the Government Employee-Management Relations Act.

2. The Board has exclusive jurisdiction over the parties and the subject matters of the Complaint on file herein pursuant to the provisions of NRS Chapter 288.

3. NRS 288.170 provides that the primary criterion for that determination must be the community of interest among the employees concerned.

4. NRS 288.028 further defines a "bargaining unit" as "a group of local government employees recognized by the local government employer as having sufficient community of interest appropriate for representation by an employee organization for the purpose of collective bargaining."

5. A community of interest includes, among other considerations: similarities in duties, skills, working conditions, job classifications, employee benefits, and the amount of interchange or transfer of employees, integration of an employer's operations and supervision of employees.

6. The Board also considers factors such as the desires of the affected employees, geographic proximity, common objectives in providing services, personnel policy, and the frequency of contact among the employees.

1 7. Because this is an area where special expertise is needed, the Board has exceptionally
2 broad discretion in determining an appropriate unit.

3 8. The Board finds it would be inappropriate to do so at this stage for the Board to
4 recognize Teamsters Local 14 as their exclusive bargaining representative.

5 9. NRS 288.160 requires an employee organization to present a copy of its constitution and
6 bylaws, if any; a roster of its officers, if any, and representatives; and a pledge in writing not to strike
7 against the local government employer under any circumstances. If an employee organization, at or
8 after the time of its application for recognition, presents a verified membership list showing that it
9 represents a majority of the employees in a bargaining unit, and if the employee organization is
10 recognized by the local government employer, it shall be the exclusive bargaining agent of the local
11 government employees in that bargaining unit.

12 10. The Board was not presented with sufficient evidence that Complainant meet all of the
13 requirements above. *See also* NAC 288.143.

14 11. NRS 288.160 is plain and unambiguous that if the employee organization presents a
15 verified membership list and is recognized, Board involvement is generally not required.

16 12. Equitable estoppel is not warranted in this matter.

17 13. Equitable estoppel was not established.

18 14. If any of the foregoing conclusions is more appropriately construed as a finding of fact, it
19 may be so construed.

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ORDER

Based on the foregoing, it is hereby ordered that the Board finds that the DDAs do not share a sufficient community of interest with the existing bargaining unit employees.

DATED this _____ day of July, 2019.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 
BRENT LECKERSLEY, ESQ., Chair

By: 
SANDRA MASTERS, Vice-Chair

By: 
GARY COTTINO, Board Member

Exhibit 6

Exhibit 6

NYE County Management Employees Association vs Nye County

Transcripts of Proceeding

DAY 1

April 9, 2019



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STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD
NYE COUNTY MANAGEMENT EMPLOYEES
ASSOCIATION,
Complainant/Employee, Case No. 2018-012
vs.
NYE COUNTY,
Respondent/Employer.

TRANSCRIPT OF PROCEEDINGS
DAY 1
Taken on April 9, 2019
at 8:39 A.M.
at 3300 West Sahara Avenue, Fourth Floor, Tahoe Room
Las Vegas, Nevada

Reported by: Marcia Leonard, CCR 204

Day 1
 NYE County Management Employees Association vs Nye County

2.5

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1	A P P E A R A N C E S	1	MICHAEL VIETA-KABELL
2	The Panel:	2	Direct Examination by Mr. Levine
3	Grant Eckersley, Chairman	3	Cross-Examination by Mr. Crosby
4	Sandra Masters, Vice Chairman	4	Redirect Examination by Mr. Levine
5	Gary Cottino, Board Member	5	Recross-Examination by Mr. Crosby
6	For the Complainant/Employee:	6	Further Redirect Examination by Mr. Levine
7	Adam Levine, Esq.	7	Further Redirect Examination by Mr. Levine
8	Law Offices of Daniel Marks	8	Further Recross-Examination by Mr. Crosby
9	610 South Ninth Street	9	DARRIN TUCK (Recalled)
10	Las Vegas, Nevada 89101	10	Direct Examination by Mr. Levine
11	702.388.0536	11	Cross-Examination by Mr. Crosby
12	702.388.6812 Fax	12	Redirect Examination by Mr. Levine
13	alevine@danielmarks.net	13	
14	For the Respondent/Employer:	14	
15	Nicholas D. Crosby, Esq.	15	
16	Marquis Aurbach Coffing	16	
17	10001 Park Run Drive	17	
18	Las Vegas, Nevada 89145	18	
19	702.842.2133	19	
20	702.856.8932 Fax	20	
21	ncrosby@naclew.com	21	
22	Also Present:	22	
23	Donald Bordenlove, Deputy Attorney General	23	
24	Bruce K. Snyder, Commissioner	24	
25	Darrin Tuck, Union Representative	25	
	Brad Richardson, Esq., Deputy District Attorney		
page 3		page 5	
1	I N D E X	1	LAS VEGAS, NEVADA, APRIL 9, 2019
2		2	8:39 A.M.
3	DARRIN TUCK	3	-000-
4	Direct Examination by Mr. Levine	4	
5	Cross-Examination by Mr. Crosby	5	CHAIRMAN ECKERSLEY: Let's go ahead and
6	Redirect Examination by Mr. Levine	6	reconvene the Employee-Management Board meeting,
7	Recross-Examination by Mr. Crosby	7	April 9th, Item 8, Case 2018-012, Nye County Management
8	PATRICK FRAGUSON	8	Employees Association versus Nye County.
9	Direct Examination by Mr. Levine	9	Welcome, everyone. I've got a full room today,
10	Cross-Examination by Mr. Crosby	10	which is sometimes a good sign and sometimes a bad sign.
11	Redirect Examination by Mr. Levine	11	But we'll go ahead and just begin with introductions. It
12	DANIEL YOUNG	12	will help the court reporter as well.
13	Direct Examination by Mr. Levine	13	Kind of go to my left. I'm Grant Eckersley,
14	Cross-Examination by Mr. Crosby	14	Chairman.
15	Redirect Examination by Mr. Levine	15	MR. MASTERS: Sandra Masters, Vice-Chairman.
16	Recross-Examination by Mr. Crosby	16	MR. COTTINO: Gary Cottino, Member.
17	Further Redirect Examination by Mr. Levine	17	MR. LEVINE: Adam Levine, General Counsel for
18	HOMER MOSKOVICH	18	the NCEA.
19	Direct Examination by Mr. Levine	19	MR. CROSBY: Nick Crosby, Counsel for Nye
20	Cross-Examination by Mr. Crosby	20	County.
21	///	21	COMMISSIONER SNYDER: Bruce Snyder,
22	///	22	Commissioner for the NWRB.
23	///	23	MR. BORDENLOVE: Donald Bordenlove, Board
24	///	24	Counsel.
25	///	25	CHAIRMAN ECKERSLEY: Sir, go ahead in the back

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<p style="text-align: right;">page 94</p> <p>1 community of interest exists?</p> <p>2 A. No.</p> <p>3 Q. Okay. So if you look in the binder in front of</p> <p>4 you, there is, Exhibit 2 is the Collective Bargaining</p> <p>5 Agreement. If you could turn to page four for me.</p> <p>6 Paragraph four on page four has subparagraphs A</p> <p>7 through U, which these are the classifications that are</p> <p>8 covered by the NCMEA Collective Bargaining Agreement,</p> <p>9 right?</p> <p>10 A. Uh-huh, yes.</p> <p>11 Q. Looking at those classifications, can you tell</p> <p>12 me do you work on a consistent basis with any of the</p> <p>13 employees in those classifications?</p> <p>14 A. No.</p> <p>15 Q. Do you have frequent and direct interaction</p> <p>16 with any of the classifications identified in that</p> <p>17 document?</p> <p>18 A. No.</p> <p>19 Q. Do you work side by side with any employees in</p> <p>20 those classifications?</p> <p>21 A. No.</p> <p>22 Q. Do you work together with any employees in</p> <p>23 those classifications to fulfill any joint obligation to</p> <p>24 the County?</p> <p>25 A. No.</p>	<p style="text-align: right;">page 95</p> <p>1 This was the deputy district attorney job description,</p> <p>2 the one that you signed and received back on Exhibit 20.</p> <p>3 If you turn the page to what's the second page of the</p> <p>4 actual job description, under work direction, lead, and</p> <p>5 supervisor responsibility, what is listed as your</p> <p>6 responsibilities in that capacity?</p> <p>7 A. It says not applicable.</p> <p>8 Q. You're not a supervisor of anybody, correct?</p> <p>9 MR. LEVINE: Objection. That calls for a legal</p> <p>10 conclusion under 288.075(a).</p> <p>11 BY MR. CROSBY:</p> <p>12 Q. Do you believe you are a supervisor?</p> <p>13 A. Not a direct supervisor.</p> <p>14 Q. Do you have the right to fire anybody?</p> <p>15 A. No.</p> <p>16 Q. And you report directly to the District</p> <p>17 Attorney, correct?</p> <p>18 A. I do.</p> <p>19 Q. You don't report to the County Manager?</p> <p>20 A. Correct.</p> <p>21 Q. Okay.</p> <p>22 MR. CROSBY: Nothing further, Miss Boskovich.</p> <p>23 Thank you.</p> <p>24 MR. LEVINE: Nothing further from me.</p> <p>25 CHAIRMAN ECKERSLEY: Questions of the Board?</p>
<p style="text-align: right;">page 95</p> <p>1 Q. And looking at those classifications on</p> <p>2 paragraph, in paragraph four, can you identify any roles</p> <p>3 that you share in the performance of your duties?</p> <p>4 A. No.</p> <p>5 Q. Do you know if any of those classifications</p> <p>6 require a juris doctorate degree?</p> <p>7 A. They don't to my knowledge.</p> <p>8 Q. And none of them require a law license either?</p> <p>9 A. Correct.</p> <p>10 Q. And your job does require those?</p> <p>11 A. Correct.</p> <p>12 Q. That degree and that license, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Do you work out in the field alongside any of</p> <p>15 the employees in those classifications?</p> <p>16 A. No.</p> <p>17 Q. Exhibit 12 is, if you turn to that for me.</p> <p>18 This is the, if you turn to the second page. This is the</p> <p>19 job description for deputy district attorney.</p> <p>20 For the record, page one states the last time</p> <p>21 this was accessed on the Nye County website, which is</p> <p>22 April 2, 2019. Despite the January 19, 1993, footnote,</p> <p>23 it's the current job description that appears on the Nye</p> <p>24 County website.</p> <p>25 Second page. Sorry. That was for the court.</p>	<p style="text-align: right;">page 97</p> <p>1 MR. COTTINO: No questions.</p> <p>2 CHAIRMAN ECKERSLEY: Thank you for your</p> <p>3 testimony.</p> <p>4 (Recess.)</p> <p>5 CHAIRMAN ECKERSLEY: The court reporter will</p> <p>6 swear you in.</p> <p>7</p> <p>8 MICHAEL VIETA-KABELL,</p> <p>9 having been first duly sworn to testify to the truth, the</p> <p>10 whole truth, and nothing but the truth, testified as</p> <p>11 follows:</p> <p>12</p> <p>13 DIRECT EXAMINATION</p> <p>14 BY MR. LEVINE:</p> <p>15 Q. Can you state your name for the record and spell</p> <p>16 it, please.</p> <p>17 A. My name is Michael Vieta-Kabell. That's</p> <p>18 M-I-C-H-A-E-L, V-I-E-T-A, hyphen, K-A-B-E-L-L.</p> <p>19 Q. And, Michael, where are you currently employed?</p> <p>20 A. At the Nye County Office of the District</p> <p>21 Attorney.</p> <p>22 Q. In what capacity?</p> <p>23 A. I'm a prosecutor.</p> <p>24 Q. And how long have you been a prosecutor?</p> <p>25 A. I'll be at 10 years on May 19th.</p>

<p>page 98</p> <p>1 Q. Were all 10 years with the Nye County DA's 2 Office? 3 A. Yes. 4 Q. And during those 10 years, have you ever done 5 any civil? 6 A. No. 7 Q. Michael, if I could have you turn to Exhibit 3. 8 And particularly page two, which is the February 6th 9 recognition letter. 10 Do you recognize that? 11 A. Yes. 12 Q. Okay. And who sort of was, for lack of a 13 better term, the ringleader who went around to get the 14 signatures on this document? 15 A. That was me. 16 Q. There is a signature by a Katrina Samuels. 17 Do you see that? 18 A. Yes. 19 Q. Is she still employed at the Nye County DA's 20 Office? 21 A. No, she's not. 22 Q. Where did she go? 23 A. She went to the Attorney General's Office. 24 Q. All right. Now, if we turn to Exhibit 4. If 25 you compare Exhibit 3 and Exhibit 4, there was a</p>	<p>page 100</p> <p>1 Q. Can you, could you be in the NCEA, which is 2 what I usually refer to as like the blue collar 3 bargaining unit? 4 A. No. 5 Q. Why? 6 A. It would be a logistical nightmare. They have 7 overtime. I'm an exempt employee. They're all hourly 8 employees, and I've glanced briefly at what sort of 9 things they have in their Collective Bargaining 10 Agreements and, you know, I just wouldn't fit. 11 Q. For example, do they get overtime? 12 A. They do. 13 Q. Standby pay? 14 A. Yes. 15 Q. As an attorney, are you overtime eligible? 16 A. No. I'm an exempt employee, so I just get paid 17 what I get paid, whether I'm there a hundred hours a week 18 or 39. 19 Q. I would like to talk about the issue of 20 community of interest. 21 A. Okay. 22 Q. But before I do. Well, in fact this is part of 23 community of interest. Let me have you turn to 24 Exhibit 9. 25 Are you familiar with Exhibit 9?</p>
<p>page 99</p> <p>1 signature line for a John Friel. 2 Is he still employed at the DA's Office? 3 A. He's not. 4 Q. Okay. Did somebody get assigned to the 5 criminal division who signed in his place, on Exhibit 4 6 at the bottom? 7 A. The bottom. Oh, it wasn't that Kirk Vitto was 8 assigned to the criminal division. He's been the chief 9 criminal deputy since long before I started there, but I 10 could see here on this that Mr. Vitto signed on that line 11 and scratched out Mr. Friel's name. 12 Q. Okay. And just so we're clear, is Mr. Vitto 13 going to be -- where is Mr. Vitto right now? 14 A. Hopefully, he's on the road. He had an 8:30 15 calendar, a 9:00 calendar in Pahrump, and stated to me 16 earlier that he was going to drive down here when he was 17 done with that. 18 Q. Okay. Michael, it has been stipulated that 19 there are four bargaining units in Nye County. NCEA, 20 NCMEA, NCLEA and NCASS. 21 Are you eligible to be in the NCLEA or NCASS? 22 A. No. 23 Q. Why? 24 A. Those are peace officer unions and, yeah, we're 25 not allowed to be in the same union.</p>	<p>page 101</p> <p>1 A. Yes. 2 Q. Did you send this to me? 3 A. Yes. 4 Q. Where did you obtain this? 5 A. If I remember correctly, I got it right off the 6 County website. 7 Q. And this indicates it's Nye County Management 8 Employees Pay Scale, correct? 9 A. Correct. 10 Q. If we take a look at, in the grades that are 11 part of the pay scale for the NCMEA, do you fall under 12 this? 13 A. I fall under a non-represented classification 14 in Grade 21 as a deputy district attorney. 15 Q. Right. So if we take a look at Grade 21, it 16 lists deputy district attorney, director of 17 administrative services, and director of human resources? 18 A. Yes, and that's me. 19 Q. All right. Now, in addition to sharing the pay 20 scale and being listed on the pay scale for the NCMEA 21 employees, are you familiar with their contract and their 22 benefits? 23 A. Yes. 24 Q. Do you get the same benefits that they do? 25 A. Yes.</p>

<p style="text-align: right;">page 102</p> <p>1 Q. Do you accrue overtime at the same rate?</p> <p>2 A. Not overtime.</p> <p>3 Q. Pardon me. I meant annual leave, sorry. Do</p> <p>4 you accrue annual leave at the same rate?</p> <p>5 A. Yeah, annual leave. Sick leave. I get</p> <p>6 longevity based on that contract, yes.</p> <p>7 Q. Do you believe that there is a community of</p> <p>8 interest with the NCMEA that is stronger than any other</p> <p>9 bargaining unit?</p> <p>10 A. Yes, absolutely.</p> <p>11 Q. Can you explain why?</p> <p>12 A. I've been working with Nye County for, you</p> <p>13 know, 10 years, and I like to, you know, know how I'm</p> <p>14 getting compensated. You know, one of the primary aims</p> <p>15 of pretty much any Collective Bargaining Agreement is how</p> <p>16 are these people getting paid, so I familiarized myself</p> <p>17 with that. I've always been governed by their pay scale.</p> <p>18 I've also, ever since I have worked there,</p> <p>19 been, you know, graded out on that pay schedule and</p> <p>20 received compensation based on that. I have a</p> <p>21 longstanding expectation that that's how I'm getting</p> <p>22 compensated for doing that work.</p> <p>23 You know, in addition, these are people that I</p> <p>24 don't see directly in my office, but like Brad,</p> <p>25 Mr. Adams, you know, he'll stop by every once in a while</p>	<p style="text-align: right;">page 104</p> <p>1 Q. Notwithstanding the fact that Nye County has</p> <p>2 failed to formally recognize the NCMEA as your bargaining</p> <p>3 representative for over a year, are the prosecutors</p> <p>4 actually voluntarily paying dues to the NCMEA right now?</p> <p>5 A. Yes. I don't know if every single one of them</p> <p>6 is. I knew that myself, Miss Boskovich, Mr. Young, and</p> <p>7 Mr. Ferguson, I have personally seen them hand over</p> <p>8 checks to the NCMEA for dues.</p> <p>9 Q. Let's talk about the one name you didn't</p> <p>10 mention there, Christi Kindel. You recognize Christi's</p> <p>11 signature on Exhibit 3?</p> <p>12 A. Yes. I'll turn to it, but I have reviewed it,</p> <p>13 and yes, I know her signature and I know it's affixed to</p> <p>14 Exhibit 3.</p> <p>15 Q. At the time that the prosecutors requested</p> <p>16 representation, was she assigned to the, assigned as a</p> <p>17 criminal prosecutor?</p> <p>18 A. Yeah, yes.</p> <p>19 Q. Did something change after recognition was</p> <p>20 requested but while it was being, for lack of a better</p> <p>21 term, stalled?</p> <p>22 A. She was reassigned to the civil division.</p> <p>23 Q. And when did that occur?</p> <p>24 A. It occurred sometime I believe in January of</p> <p>25 this year.</p>
<p style="text-align: right;">page 103</p> <p>1 or, you know, occasionally when I'm out doing other</p> <p>2 things in the County, you know, case-related stuff, maybe</p> <p>3 going and getting a GIS map for an exhibit for criminal</p> <p>4 prosecution, I might run across somebody like Mr. Tuck.</p> <p>5 And these are people who have been dealing with</p> <p>6 the County, dealing with these same issues of how we get</p> <p>7 compensated and how we get treated, you know, for similar</p> <p>8 lengths of time, and they understand the same way I do</p> <p>9 how the County works and, you know, what the County, how</p> <p>10 it operates. How it, you know, how it acts towards us.</p> <p>11 How it treats us.</p> <p>12 So to me it makes sense to collectively bargain</p> <p>13 with the NCMEA because essentially I've been free riding</p> <p>14 on them for 10 years, you know. It's a good arrangement.</p> <p>15 Not the free riding part of it, but it seems like it's</p> <p>16 been an appropriate contract, and it's compensated me</p> <p>17 appropriately, not just monetarily, but with my leave</p> <p>18 accrual, with my benefits for 10 years. And I don't see</p> <p>19 why I should break from that.</p> <p>20 I simply would like to enjoy some of the</p> <p>21 benefits of being a represented classification like due</p> <p>22 process in termination. You know, it's basically the</p> <p>23 wheel's not broke. I don't want to fix it. I just want</p> <p>24 to be part of it. Up closer, you know, more deeply</p> <p>25 entrenched part of it than I have been previously.</p>	<p style="text-align: right;">page 105</p> <p>1 Q. Okay. Just very recently?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Is she the only one that you know of who</p> <p>4 is not paying dues?</p> <p>5 A. Yes. Well, and I don't know that she's not</p> <p>6 paying dues, but I don't have any reason to believe she</p> <p>7 is.</p> <p>8 Q. Okay. We're going to call Miss Kindel</p> <p>9 tomorrow, but let me ask you, is there any deputy</p> <p>10 criminal DA, either that was assigned as a criminal DA at</p> <p>11 the time recognition was requested or is assigned now,</p> <p>12 that you're aware of who does not want to organize and be</p> <p>13 represented by the NCMEA?</p> <p>14 A. No.</p> <p>15 Q. Is it unanimous?</p> <p>16 A. Yes.</p> <p>17 MR. LEVINE: I'll pass the witness.</p> <p>18</p> <p>19 CROSS-EXAMINATION</p> <p>20 BY MR. CROSBY:</p> <p>21 Q. Good morning.</p> <p>22 A. Good morning.</p> <p>23 Q. On Exhibit 3, it looks like you still have it</p> <p>24 open. You signed that document and in the last sentence</p> <p>25 on the first paragraph says we share a community of</p>

Exhibit 7

Exhibit 7

CHRIS ARABIA
District Attorney



KIRK VITTO
*Chief Deputy District Attorney
Criminal Division*

MARLA ZLOTEK
*Chief Deputy District Attorney
Civil Division*

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October 11, 2019

Michael Vieta-Kabell
mvkabell@gmail.com

Dear Mr. Vieta-Kabell,

This is in response to your September 26, 2019 email (with a letter dated September 23). The following information is not intended to be all-inclusive but does provide in substantial part the primary reasons for your termination.

1. General Insubordination.

Throughout my tenure, you never accepted my leadership or your subordinate role. You were resistant to directives, acted as though you had authority that superseded mine, and showed a deficient appreciation of the fact that a deputy DA is supposed to function as an extension of or proxy for the DA, i.e. carry out the DA's policies and act in the best interests of the DA.

I had hoped to avoid the need to do write-ups and had hoped that your behavior would improve over time, but it did not.

I met with you in July of 2019 and urged you, among other things, to bear in mind that some of the changes I had made were made in part to give you a chance to demonstrate an ability and willingness to follow my directives and programs. You continued to fall short in this area, with respect to my case screening policy in particular.

On August 14, 2019, we had another meeting and I again stressed the need for you to follow the policies of this office. I restated that part of the reason for maintaining the new screening policy (which you clearly disagreed with) was to assess whether or not you were willing and able to follow the new directives. I had hoped that you would seize that opportunity to show the ability and willingness to abide.

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The problems continued and I started writing you up out of frustration and in the hope that you would take advantage of the opportunity to show a basic willingness and ability to follow directives. It is worth noting that while you received four reprimands in the last month of your employment, I could have issued numerous reprimands in prior months (again, I was—perhaps naively—hoping that the issues would subside as the early stages of my term passed).

After the fourth reprimand (addressed in more detail in #3 below), I was thinking—again—about what I could do to get you on board when I realized that the chronic nature of the problem meant that it was irremediable.

2. Ethics, and in Deputy/Insubordination Context

When I was a defense lawyer, we opposed each other in two jury trials. In one of those (State v. Hamett), you committed an egregious breach of your ethical duties. When one of the alleged victims recanted, you told me simply that the alleged victim was no longer cooperating with the state. You then told the Judge that you had informed me of the recantation (I was able to refute that almost on the spot). The Judge assured me that there was no need for me to report the incident to anyone, so I did not.

While I realize that that was in 2012, the misconduct has always remained in the back of mind.

As a Deputy, you were in a position to sign documents in my name. Because of your persistent insubordination, unwillingness/inability to follow directives, lack of respect for my leadership, and apparent desire to be in charge, I was no longer comfortable with the idea of you signing legally significant documents on my behalf (for both ethical and practical reasons). Your actions in the August 16, 2019 hearing in State v. Wilson brought this issue into stark relief after I finally had a chance to review the transcript.

3. State v. Wilson, August 16, 2019 hearing

For that hearing, I gave clear instructions to make a record of the state's opposition to the continuance and to say nothing else. Beyond the readily apparent issues and complexities of the case, there are other factors at play that put the DA's office in a very difficult position.

Thus, I determined that the best course of action was to oppose the continuance and do nothing else, and to maintain a posture that would not be seen as pro- or anti- any particular attorney. I could not trust you with all of the details regarding the reasons for my decision, in no small part because I was concerned that you would pass the information along to opposing counsel (that I felt such a concern was a problem in and of itself).

At the hearing, you took it upon yourself to mention that the state was making a record of its opposition and then to speak at greater length and conviction about multiple reasons why a continuance was a good idea or at the very least not an ill-advised idea. You made several defense arguments that defense counsel had not made (for whatever reason). You fostered the impression that the DA's office was tacitly acquiescing to the continuance. Anyone who saw the hearing or reviewed the transcript could easily arrive at the conclusion that the DA's office was going out of its way to help defense counsel.

This impression could weaken any opposition to additional defense requests to continue and could cause problems for the DA's office and the County if the DA's office is seen as having aided defense counsel.

4. State v. Flood, Insubordination and Attempted Refusal to Prosecute

You violated policy by overruling the screener and deciding that a case required dismissal or withdrawals of charges because the suspect had not been questioned. When the screener requested a citation to authority for the proposition that an interview with the suspect was a required element of the charged offense (which went above and beyond as the screener could have simply overruled without explanation), you shifted gears and asserted that you did not believe that the defendant committed the offense. As my deputy, you had an obligation to follow my office's good-faith determination that prosecution was appropriate (this was not a situation where one could argue that the decision to prosecute was made in anything other than good faith).

5. Screening

When I reassigned all screening to two other deputies, you went the extra mile to disobey the new policy, engage in insubordination, and frustrate and subvert my reform efforts. You took cases from one of the screeners, overruled the screeners, circumvented the screening process, etc. Even after two meetings with me during which I stressed the importance of at least demonstrating that you could follow a new and specific policy, you continued (often passive-aggressively) to try to get around the policy and substitute your preferred procedure for mine.

6. Office Policy on PDs

On August 23, 2019, you invited Dan Martinez into the office during a time when you thought I was not in the office. This violated an unambiguous policy and was a gross display of insubordination in front of the administrative staff. Had I not caught it, it could also have led to other unnecessary problems.

7. Insubordination and Unwillingness to Do Job, Refusal of Civil Work

When one of your colleagues attempted to implement my directive to have you do some civil law assignments, you refused. You refused even though your job description very clearly includes possible civil law assignments. At the time, I was too overwhelmed with other management and personnel problems to respond sufficiently to this gross abrogation of your duties, but it did inform my later thinking with respect to your ongoing insubordination issues.

8. Attempted Insubordination in Presence of Most Colleagues

During a staff meeting, I announced that I was considering having a deputy DA attend CAC hearings. In front of all the other prosecutors, you declared that you would not do CAC hearings. While I corrected you right then and there, the incident was yet another example of your seeming belief that you were in charge of your own work assignments.

9. Feigned Misunderstanding/Mistake

You often failed to follow the rules or engaged in insubordination and then feigned mistake or misunderstanding. I did not chronicle these instances but it was a consistent refrain. The errors seemed to flow in the insubordinate direction and frankly it repeatedly strained credulity for you to suggest that a Michigan Law grad could be as limited in basic comprehension as you sometimes seemed to suggest that you were.

10. No Trust

My experiences with you during my term in office unfortunately led me to conclude that I could not sufficiently trust you in your role as one of my deputies to justify the continuation of your employment.

11. Insubordination with Passive-Aggressiveness and Respect Issues

Your insubordination, passive-aggressiveness, lack of respect, and repeated efforts to subvert and undermine my policies caused problems in the office. Besides setting a poor example, your attitude caused tension and unrest among staff. You were also a negative influence on at least one of your fellow DDAs. Multiple members of team expressed the opinion that your presence was frustrating efforts to accomplish the office's mission.

Since your departure, the atmosphere in the office has noticeably improved, there is less tension, and there has been a noticeable improvement in the attitude and performance of some of your former colleagues.

12. "At Will" Employee

You were an "at will" employee without due process and/or cause protections in the termination context (i.e. subject to termination with or without cause and at any time), as contemplated by NRS 252.070 and as confirmed by your sworn testimony in April of 2019. The office chose to exercise its right to terminate your employment.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Arabia", written over a horizontal line.

CHRIS ARABIA
Nye County District Attorney

Kait Flocchini

From: Laura Peters
Sent: Friday, December 20, 2019 2:01 PM
To: Christopher R. Arabia
Subject: RE: Grievance File OBC19-1383/ Michael Vieta-Kabell, Esq.

Good Afternoon Mr. Arabia:

I have reviewed your response and have one follow-up question: As I understand it, the allegation of a violation of 1.7 stems from your cease & desist demand regarding the 10/9/19 termination appeal meeting. Had Rebecca Bruch been retained to represent the county with regard to the Kabell matter by that point?

Thank you for your cooperation with this process,

Laura Peters
Paralegal/Investigator
Office of Bar Counsel
laurap@nvbar.org
Direct Line – 775-328-1382

From: Christopher R. Arabia <crarabia@co.nye.nv.us>
Sent: Thursday, December 19, 2019 3:23 PM
To: Laura Peters <LauraP@nvbar.org>
Subject: RE: Grievance File OBC19-1383/ Michael Vieta-Kabell, Esq.

Dear Ms. Peters,

As we discussed by telephone on December 6, I am now submitting my response. I also sent a copy via U.S. Mail this afternoon. I appreciate your courtesy in allowing me the extra time.

Thank you,

CHRIS ARABIA
NYE COUNTY DISTRICT ATTORNEY
crarabia@co.nye.nv.us

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NYE COUNTY DISTRICT ATTORNEY COMMUNICATION

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From: Laura Peters <LauraP@nvbar.org>
Sent: Friday, November 15, 2019 2:44 PM
To: Christopher R. Arabia <crarabia@co.nye.nv.us>
Subject: Grievance File OBC19-1383/ Michael Vieta-Kabell, Esq.

Hard Copy to Follow

Laura Peters
Paralegal/Investigator
Office of Bar Counsel
laurap@nvbar.org
Direct Line – 775-328-1382

Kait Flocchini

From: Laura Peters
Sent: Friday, December 20, 2019 1:18 PM
To: mvkabell@gmail.com
Subject: Grievance File OBC19-1383/ Christopher Arabia, Esq.
Attachments: DOC003.pdf

Good Afternoon Mr. Vieta-Kabell:

Please find the attached correspondence in response to the grievance you submitted to our office on or about October 25, 2019. If you wish to provide a rebuttal to Mr. Arabia's remarks, please do so **on or before January 13, 2019**. This matter will be investigated and screened before a panel for the Southern Nevada Disciplinary Board.

Thank you,

Laura Peters
Paralegal/Investigator
Office of Bar Counsel
laurap@nvbar.org
Direct Line – 775-328-1382

REBUTTAL TO RESPONSE TO BAR COMPLAINT OBC 19-1383

TO: THE STATE BAR OF NEVADA

FROM: MICHAEL VIETA-KABELL

SUBJECT: BAR COMPLAINT AGAINST CHRISTOPHER ARABIA, ESQ., OBC 19-1383

DATE: JANUARY 3, 2020

In item 1(a) of Mr. Arabia's response to the bar he makes legal argument regarding the propriety of Nye County holding an appeal hearing regarding my termination. The propriety of an appeal hearing regarding my termination is something that should have been determined by the county with advice from an unconflicted attorney. Instead Mr. Arabia ordered Nye County Human Resources to cancel the appeal hearing. He did not clarify that he was not acting as counsel for the Director of Human Resources and his directive to counsel the appeal hearing was clearly a directive and not an argument presented by a party pleading their case.

Mr. Arabia's legal arguments to the bar over the propriety of my termination and/or the propriety of Nye County Human Resources scheduling an appeal hearing regarding my termination are irrelevant to fact that he provided legal advice to his client in a matter where he was clearly conflicted. Furthermore, it is my position that Mr. Arabia's reliance on his authority to appoint DDAs is misplaced because he was not appointing me he was improperly terminating me in violation of the limits on terminating public employees set forth under the Nevada Revised Statutes and the Nye County Code.

In item 1(b) of Mr. Arabia's response to the bar he states, "I did not object to Mr. Vieta-Kabell receiving a copy of my demand to cancel the hearing because I was not acting as the county's counsel." More information from Danelle Shamrell would be helpful to determine if Mr. Arabia was actually given an opportunity to object to the dissemination of the incriminating email. If he was not actually given an opportunity to object to dissemination of the incriminating email then his response under item 1(b) constitutes an attempt to mislead the bar about the facts surrounding the grievance and is a violation of NRPC 8.1 and 8.4. If Ms. Shamrell did ask Mr. Arabia for permission to disseminate the incriminating email then that indicates that she clearly understood his email to be legal advice.

In item 1(c) of Mr. Arabia's response to the bar he states that I am attempting to obtain a monetary settlement from Nye County. That is accurate. I believe that Nye County's decision to follow his directions as legal counsel for the county and cancel my appeal hearing in violation of the merit based personnel procedures set forth in the county code as well as protections for collective bargaining set forth under the Nevada Revised Statutes is actionable and I am pursuing legal remedies.

In item 1(c) of Mr. Arabia's response to the bar he also states that, "I have had no role in possible negotiations." That statement is false. Mr. Arabia retained attorney Nick Crosby to interfere in settlement negotiations between me and Nye County. (Exhibit 1). This shows a clear intent to deceive the State Bar, and constitutes an additional violation of NRPC 8.1 and 8.4. Attorney Nick Crosby and attorney Becky Bruch as well attorney Brent Huntley may have additional relevant information on this point.

In item 3 of Mr. Arabia's response he states that his actions served no personal interest. Attorney Arabia's personal interest in avoiding legislative or judicial limitations on his power to terminate employees is obvious. Instead of arguing his points at the appeal hearing or seeking injunctive relief through the courts to stop what he viewed as an improper appeal hearing he abused his position as District Attorney and legal counsel for Nye County and issued a directive to Human Resources in a matter where he was clearly conflicted. I was specifically told by attorney Jason Earnest that Mr. Arabia was taking the collective bargaining attempts by the Criminal Deputy District Attorneys personally. I also had conversations with attorney Adam Levine as well as attorney Brian Kunzi where they indicated that Mr. Arabia's feelings and/or views regarding employee protections were unusually strong and/or extreme.

In item 4 of Mr. Arabia's response he relitigates the propriety of my termination. Although that is irrelevant to whether he provided advice to a client on a matter where he was conflicted it is worth noting that Mr. Arabia misleads the bar about the EMRB's ruling. In the first full paragraph on page 3 of Mr. Arabia's response he asserts that the EMRB ruling supports his contention that I was an at will employee and references the EMRB's ruling as exhibit 5 to his response. Mr. Arabia neglected to disclose to the bar that the EMRB issued a second ruling that clearly states that I and the other Criminal Deputy District Attorney's of Nye County did have a right to collectively bargain. (Exhibit 2). This omission by Mr. Arabia further demonstrates his intent to deceive the State Bar and constitutes another violation of NRPC 8.1 and 8.4.

In item 4 of Mr. Arabia's response he also accuses me of failing to disclose my sworn testimony before the EMRB where I testified that I wanted to collectively bargain to gain due process in termination. I did not fail to disclose the EMRB case to the State Bar. It is clearly referenced in my original bar complaint. Furthermore, my testimony was given before I became aware that the Nye County Code contained a merit based personnel system that provided protections to Deputy District Attorneys. Even if I had never found out that I had protections through the Nye County Code, my testimony does not constitute controlling authority on the issue.

In item 5 of Mr. Arabia's response he states that I requested a written statement outlining the reasons for my termination, and that I did not wait for his response before sending my offer of settlement to the county. Requesting a written statement outlining the reasons for my termination was a prerequisite to demanding an appeal hearing as provided by the Nevada Revised Statutes, separate from the merit based personnel system. That request was a procedural act taken by me to preserve remedies. It was already abundantly clear that my termination was retaliatory and improper.

In item 5 of Mr. Arabia's response he states that it was my attorney who designated me the ringleader of the collective bargaining efforts during the EMRB hearing. That is accurate. I became aware that Mr. Arabia was focused on me as the ringleader of said efforts when attorney Don Chairez told me that Mr. Arabia knew I was the ringleader of said efforts after the EMRB hearing.

In item 5 of Mr. Arabia's response he states that a bar complaint is not a proper mechanism to resolve an employment dispute. I agree. My bar complaint is based on his violations of the rules of professional conduct. It is incidental that my employment dispute with Nye County motivated Mr. Arabia to violate the rules of professional conduct.

In item 6 of Mr. Arabia's response he states that I failed to cite to any facts that demonstrate his violation of NRPC 8.4. That is false. I can think of no more effective way to state or imply an ability to improperly influence a government agency or official or to achieve results by means that violate the rules of professional conduct than to actually do so. The incriminating email clearly demonstrates this violation.

In his conclusion Mr. Arabia accuses me of trying to extort a settlement from Nye County by filing a bar complaint. This is false. I am pursuing legitimate legal actions against Nye County. The violation of the NRPC by Mr. Arabia is serious and should be pursued regardless of the outcome of any settlement or lack thereof between me and Nye County.

In his conclusion Mr. Arabia also accuses me of having a conflict when I made the bar complaint because I worked for the bar at that time. Under NRPC 8.3 I had an affirmative duty to report Mr. Arabia's misconduct. I did not prepare my grievance internally. It was prepared outside of my employment hours and I had no involvement in the processing grievance outside of my role as the grievant. I also did not use any Nevada State Bar equipment materials or supplies in preparing my bar complaint. This accusation by Mr. Arabia with no basis in fact truly emphasizes his character and lack of ethics.



Michael Vieta-Kabell

EXHIBIT 1



Michael Vieta-Kabell <mvkabell@gmail.com>

settlement demand

3 messages

brent huntley <brent@huntleynv.com>

Tue, Oct 15, 2019 at 5:03 PM

To: Michael Vieta-Kabell <mvkabell@gmail.com>

Michael,

I received a phone call from Nick Crosby today. He has been out of the country for the past week and he is trying to figure out how to respond to our demand or who is actually handling it. POOL has retained Becky Bruh, who is their usual attorney out of Reno (I've dealt with her on similar cases) and he is trying to figure out with her how to respond. I gave him an extension until Monday to respond to our settlement demand.

Sincerely,

Brent D. Huntley, Esq.**Huntley Law**

8275 S. Eastern Ave. #200-220

Las Vegas, NV 89123

(702) 849-2598

brent@huntleynv.com

This message and any attached documents contain information from Huntley Law that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply email and then delete this message.

Michael Vieta-Kabell <mvkabell@gmail.com>
To: **brent huntley** <brent@huntleynv.com>

Tue, Oct 15, 2019 at 8:20 PM

They should probably consider the effect of the Emrb decision so make sure they are aware of the decision if you haven't already. Additionally I have some concerns about Nick Crosby's involvement generally. When we were unionizing Sutton was working on the counties end of the unionization with Mark Ricciardi. Arabia stepped in advised the county to disregard ricciardi and Sutton's advice and went out and retained Crosby to handle the opposition to our unionization. I am filing a bar complaint against Arabia for conflicts and abusing trust in office for advising the county commission and Human Resources about a matter in which he clearly has a personal interest. So I'm very wary that Crosby actually represents Arabia's interests and not the county's I think you should ask him a pointed question on that front to make sure he's not up there just scuttling negotiations.

Sent from my iPhone
[Quoted text hidden]

<https://mail.google.com/mail/u/0?ik=0dc93f1a3f&view=pt&search=all&permthid=thread-f%3A1647506049080306468&simpl=msg-f%3A164750604908...> 1/2

brent huntley <brent@huntleynv.com>
To: Michael Vieta-Kabell <mvkabell@gmail.com>

Tue, Oct 15, 2019 at 8:25 PM

Yes, He does not represent the county. He only represents Arabia. I told him today he has no reason to be involved since our claim is with the county at this point. He is also involved in a grievance we filed in a different case because Arabia hired him. He agreed that it's very strange and is trying to get with the counties attorney to figure out what he's doing. I am planning on emailing him the decision hopefully tomorrow if I can get it

Get Outlook for iOS

From: Michael Vieta-Kabell <mvkabell@gmail.com>
Sent: Tuesday, October 15, 2019 8:20:58 PM
To: brent huntley <brent@huntleynv.com>
Subject: Re: settlement demand

[Quoted text hidden]

EXHIBIT 2

FILED

OCT 21 2019

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

OCT 22 2019

NYE COUNTY MANAGEMENT EMPLOYEES
ASSOCIATION,

Petitioner,

vs.

NYE COUNTY,

Respondent.

CASE NO. 2018-012

NOTICE OF ENTRY OF ORDER

Item No. 844-B

To: Petitioner and its attorneys of record, Adam Levine, Esq. and the Law Office of Daniel Marks;

To: Respondent and its attorneys of record, Nicolas Crosby, Esq. and Marquis Aurbach Coffing.

PLEASE TAKE NOTICE that the **ORDER ON REHEARING AND RECONSIDERATION**
was entered in the above-entitled matter on October 21, 2019.

A copy of said order is attached hereto.

DATED this 21st day of October 2019.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


MARISU ROMUALDEZ ABELLAR
Executive Assistant

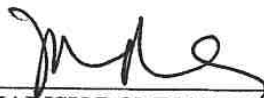
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 21st day of October 2019, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Law Office of Daniel Marks
Daniel Marks, Esq.
Adam Levine, Esq.
610 South Ninth Street
Las Vegas, NV 89101

Nick D. Crosby, Esq.
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, NV 89145



MARISU ROMUALDEZ ABELLAR
Executive Assistant

FILED

OCT 21 2019

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

NYE COUNTY MANAGEMENT
EMPLOYEES ASSOCIATION,

Complainant,

v.

NYE COUNTY,

Respondent.

Case No. 2018-012

PANEL E

**ORDER ON REHEARING AND
RECONSIDERATION**

Item No. 844-B

On October 15, 2019, this matter came before the State of Nevada, Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Government-Management Relations Act (the "Act"), NAC Chapter 288 and NRS Chapter 233B.

The Board previously found that the Deputy District Attorneys (DDAs) do not share a sufficient community of interest with the existing bargaining unit employees. Thereafter, the Board granted Complainant's Petition for Rehearing. NCMEA requested that the Board issue an order recognizing the NCMEA as the exclusive bargaining representative of the DDAs in their own bargaining unit. Complainant argued that the Board's Order was incomplete as Complainant indicated that the prosecutors wished to be represented by NCMEA and withdrew the request for recognition by Local 14. Complainant argued that all the requisites for representation by NCMEA had been met (as part of a separate bargaining unit for the prosecutors), including requesting representation, a pledge not to strike, and the County already had the Constitution and bylaws of NCMEA.

The Board held that if the County failed to file an initial response to the Board's Order granting the Petition for Rehearing, the Board would deem that requirements had been satisfied and recognize the NCMEA as the exclusive bargaining representative of the prosecutors in their own unit. Pursuant to NAC 288.364, the Board may change or modify its original decision.

1 In the County's Response it did not contest that all the requisites for representation have been
2 meet by NCMEA, instead arguing that the issue is premature as a legal barrier to membership in an
3 employee organization exists. Specifically, the County argues that the DDAs cannot be members of a
4 collective bargaining unit. NRS 252.070(6) indicates that the Legislature afforded a merit personnel
5 system for district attorneys in counties whose population was at least 700,000. The County argues that
6 recognition of NCMEA as the bargaining representative of Nye County prosecutors essentially
7 circumvents the statutory provision addressing merit personnel stems for counties with populations less
8 than 700,000, as invariably the prosecutors would be able to avail themselves to things such as a just
9 cause for termination benefit, a benefit the Legislature only intended for prosecutors employees in
10 counties of at least 700,000. The County also argues that NRS 288.140(4)(c) precludes DDAs assigned
11 to a civil department or division from membership in an employee organization.

12 While the County points to language in the Board's Order arguing that "the Board recognized
13 these statutes", the Board's language here was in relation to community of interest criteria regarding
14 whether the DDAs share a sufficient community of interest with the existing bargaining unit employees,
15 which the Board found they did not. The Board did not make a determination on whether the DDAs
16 may constitute their own separate and distinct unit. Specifically, the Board found that the similarity in
17 employee benefits, personnel policy and employee choice cut in favor of finding a community of
18 interest, also noting that the NRS 252.070(6) was "not determinative" and concluding that the
19 legislative history of that bill showed there was no intent to extend the rights in NRS 252.070(6)¹ to
20

21 ¹ The Board also notes that its jurisdiction is limited to the statutory grant of authority contained in NRS
22 Chapter 288. This is well-established. NRS 288.110(2) ("the Board may hear and determine any
23 complaint arising out of the interpretation of, or performance under, the provisions of this chapter");
24 *City of Reno v. Reno Police Protective Ass'n*, 98 Nev. 472, 474-75, 653 P.2d 156, 158 (1982)
25 (upholding EMRB decision as "[t]he EMRB did not interpret the Charter."); *UMC Physicians*
26 *Bargaining Unit v. Nevada Serv. Employees Union*, 124 Nev. 84, 89-90, 178 P.3d 709, 713 (2008) (the
27 EMRA limits "the Board to hearing complaints... arising out of NRS Chapter 288's performance or
28 interpretation."); *Int'l Ass'n of Fire Fighters, Local 1908 v. County of Clark*, Case No. A1-046120, Item
No. 811 (2015) ("IAFF argues that the merit personnel system itself should have opened this
appointment... However, it is not within our purview to determine whether or not the appointment...
complied with the County's merit personnel system. This Board authority is limited to matters arising
under interpretation of, or performance under, the Act"); *Simo v. City of Henderson*, Case No. A1-
04611, Item No. 796, at 4 (2014); see e.g., *Flores v. Clark Cty.*, Case No. A1-045990, Item No. 737, at
1-2 (2010).

1 DDAs in smaller counties. Moreover, this statute in no way provides that the prosecutors are prohibited
2 from engaging in collective bargaining. A merit system is not synonymous with collective bargaining.
3 The County's reasoning leads to the conclusion that no employees of Nye County or any other County
4 other than Clark and Washoe can have collective bargaining rights under Chapter 288 which is not
5 consistent with language or purposes and policies of the EMRA, nor the language in NRS 252.

6 As indicated, the County also argues that NRS 288.140(4)(c) precludes DDAs assigned to a civil
7 department or division from membership in an employee organization. However, the plain language of
8 the statute provides that only an attorney "who is assigned to a civil law division, department or agency"
9 is excluded from membership in an employee organization. Of note, if the Legislature had intended to
10 exclude attorneys employed by counties with a population less than 700,000, it would have provided for
11 such an exclusion. In any event, the Board previously found that the prosecutors sometimes cover civil
12 matters. However, this is not enough to deny them collective bargaining rights as it would be contrary
13 to the plain language of the statute. If the Legislature had intended to excluded attorneys who
14 sometimes handled civil work, it would have stated so, and it is not the place of the Board to engage in
15 conjecture into what the Legislature should or would have done. *See, e.g. Zenor v. State Dep't of*
16 *Transportation*, 134 Nev. 109, 110-11, 412 P.3d 28, 30 (2018) ("[I]t is not the business of this court to
17 fill in alleged legislative omissions based on conjecture as to what the legislature would or should have
18 done.").

19 Given that the County has not disputed that all the requisites for representation have been met,
20 and there are no barriers to granting collective bargaining rights to the DDAs, the Board modifies and
21 changes its prior decision to recognize the NCMEA as the exclusive bargaining representative of the
22 prosecutors.

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ORDER

Good cause appearing, the Board changes and modifies its prior Order consistent with the above, including the recognition of the NCMEA as the exclusive bargaining representative of the prosecutors.

DATED this 21 day of October 2019.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 
BRENT ECKERSLEY, ESQ., Chair

By: 
SANDRA MASTERS, Vice-Chair

By: 
GARY COTTINO, Board Member

CHRIS ARABIA
District Attorney



KIRK VITTO
*Chief Deputy District Attorney
Criminal Division*

MARLA ZLOTEK
*Chief Deputy District Attorney
Civil Division*

**OFFICE OF THE DISTRICT ATTORNEY
NYE COUNTY**

*Tonopah Office
(775) 482-8166*

*Family Support Division
(775) 482-8117*

*P.O. Box 39
Pahrump, Nevada 89041
Phone: (775) 751-7080
Fax: (775) 751-4229*

*Pahrump Office
1520 East Basin Avenue*

January 6, 2020

Laura Peters, Paralegal/Investigator
9456 Double R Blvd., Ste. B
Reno, NV 89521-5977

Dear Ms. Peters:

This is in response to your letter of December 20, 2019 requesting more information on the circumstances under which Attorney Rebecca Bruch became involved in the matter underlying the instant grievance. Based on speaking to Ms. Bruch and reviewing my emails, I can provide the following approximate timeline:

September 23, 2019

2:57 p.m. Michael Vieta-Kabell submits his "appeal" of his termination to me, County Manager Tim Sutton, HR Director Danelle Shamrell, and HR employee Ryanne Gott. (Exh. A).

September 24, 2019

9:43 a.m. County HR Director Shamrell sends out an email setting the appeal hearing for October 9, 2019. (Exh. B).

1:14 p.m. Mr. Vieta-Kabell agrees to the October 9, 2019 date. (Exh. C).

4:42 p.m. I send an email to Danelle Shamrell, demanding cancellation of the appeal hearing scheduled for October 9, 2019 and giving a September 26, 2019 at 4:00 p.m. deadline for informing me of the decision regarding cancellation. (Exh. D).

5:43 p.m. County Manager Sutton sends me an email. Mr. Sutton suggests that he disagrees with my decision to terminate Mr. Vieta-Kabell. Mr. Sutton states that the decision was mine but accuses me of not following proper procedure: "Terminate or discipline who you will but please at least follow proper procedure." (Exh. E).

Nye County is an Equal Opportunity Employer and Provider

September 25, 2019

Morning County Manager Sutton (or HR Director Shamrell, or someone with the County) likely contacted Donna Squires of Pool/Pact regarding the Vieta-Kabell situation and advised Pool/Pact of a potential claim by Vieta-Kabell against the County. This can be inferred because such a call would have been the required precursor of the call from Ms. Squires to Attorney Rebecca Bruch (see immediately below). It can also be inferred because County Manager Sutton (a former Nye Deputy DA) made clear that he did not agree with what I was doing or how I was doing it.

11:15-11:25 a.m. Attorney Rebecca Bruch has a telephone conversation with Donna Squires, a Claims Administrator with Pool/Pact. According to Ms. Bruch, she was assigned to represent the County with respect to the Vieta-Kabell matter during this call. (This is based on my phone conversation with Ms. Bruch on December 27, 2019, during which she stated that she was consulting her time log/date book and email in providing information; she later emailed me regarding the specific time of day. (Exh. F).

3:57 p.m. HR Director Danelle Shamrell sent an email to me stating that there would be no hearing on October 9, 2019. (Exh. G).

4:01 p.m. Ms. Shamrell sent an email to Mr. Vieta-Kabell informing him that there would be no October 9, 2019 hearing. She added that the cancellation was at my direction. (Exh. H). However, this is incorrect. Prior to the time that she sent the emails to me and Mr. Vieta-Kabell regarding the cancellation, the County had already notified Pool/Pact of the claim and Pool/Pact had already assigned Attorney Rebecca Bruch to represent the County. Specifically, Ms. Bruch became counsel on the morning of September 25 (see second Morning item for this date), 4-1/2 hours before Ms. Shamrell sent out the cancellation emails. As far as I am aware, at no point after being assigned to the case did Ms. Bruch advise County Manager Sutton or HR Director Shamrell to rescind the cancellation of the appeal hearing and to reschedule the appeal hearing.

September 26, 2019

Morning? County Manager Sutton forwards to Ms. Bruch an email from Mr. Vieta-Kabell sent to either Mr. Sutton or HR Director Shamrell. The forwarded material contains Mr. Vieta-Kabell's responses to the four written reprimands he received while working under me. This is based on what Ms. Bruch told me during our phone conversation on December 27, 2019.

September 30, 2019

Day Mr. Vieta-Kabell, through counsel, submits a settlement demand letter to County Manager Sutton. (Exh. I). County Manager Sutton never told me about the letter and I never saw the letter until I requested it in November of 2019 after seeing it referenced in an email from Mr. Vieta-Kabell. Ms. Bruch was and is the County's lawyer for this matter.

The timeline presented above clearly shows that attorney Rebecca Bruch was assigned to this matter before the decision was made to cancel the October 9 hearing. One half-day after her entry into the matter, the HR Director cancelled the hearing. The County did not regard my email as legal advice and did not acquiesce to my demand or communicate with me about it until after Ms. Bruch's entry into the matter because both the County and I understood from the Boskovich matter that the County and DA's Office were to have different counsel for such employment matters.

Please let me know if I can provide any additional information or be of further assistance. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Arabia".

Chris Arabia
NYE COUNTY DISTRICT ATTORNEY

EXHIBIT A

EXHIBIT A

Christopher R. Arabia

From: Michael Vieta-Kabell <mvkabell@gmail.com>
Sent: Monday, September 23, 2019 2:57 PM
To: Danelle Shamrell; Timothy Sutton; Christopher R. Arabia; Ryanne Gott
Subject: Appeal of dismissal
Attachments: Appeal of Dismissal.pdf

I am hereby filing the attached appeal of my dismissal.

--

Michael Vieta-Kabell

EXHIBIT B

EXHIBIT B

Christopher R. Arabia

From: Danelle Shamrell
Sent: Tuesday, September 24, 2019 9:43 AM
To: Michael Vieta-Kabell; Timothy Sutton; Christopher R. Arabia
Subject: RE: Appeal of dismissal
Attachments: Appeal of Dismissal.pdf

All,

The appeal process requires a hearing which I have scheduled for October 9th starting at 1:30 in the Admin Conference room. Please provide a list of witnesses (if any) and any documentary evidence you intend to rely on at least five business days before the hearing.

I appreciate your reply to this email confirming your ability to meet on the referenced day.

Thank you,

D. Shamrell

Danelle Shamrell
Director of Human Resources
775-482-7242 Direct Line
Tonopah

PO Box 3400; 101 Radar Road
Tonopah, NV 89049
775-293-1707 Mobile
775-751-6309 Fax

2100 E. Walt Williams Drive, #110
Pahrump, NV 89048
775-751-6303 Direct Line
Pahrump
775-751-6309 Fax

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From: Michael Vieta-Kabell <mvkabell@gmail.com>
Sent: Monday, September 23, 2019 2:57 PM
To: Danelle Shamrell <dshamrell@co.nye.nv.us>; Timothy Sutton <tsutton@co.nye.nv.us>; Christopher R. Arabia <crarabia@co.nye.nv.us>; Ryanne Gott <rgott@co.nye.nv.us>
Subject: Appeal of dismissal

I am hereby filing the attached appeal of my dismissal.

--

Michael Vieta-Kabell

EXHIBIT C

EXHIBIT C

Christopher R. Arabia

From: Michael Vieta-Kabell <mvkabell@gmail.com>
Sent: Tuesday, September 24, 2019 1:14 PM
To: Danelle Shamrell; Timothy Sutton; Christopher R. Arabia; brent huntley
Subject: Re: Appeal of dismissal
Attachments: Amended Appeal of Dismissal.pdf

October 9th works for me. The only caveat is representation. I will advise promptly if I need to change dates to ensure I have counsel present. I have CC'd Brent Huntley on this email in those regards. I have also attached an Amended Notice of Appeal.

On Tue, Sep 24, 2019 at 9:42 AM Danelle Shamrell <dshamrell@co.nye.nv.us> wrote:

All,

The appeal process requires a hearing which I have scheduled for October 9th starting at 1:30 in the Admin Conference room. Please provide a list of witnesses (if any) and any documentary evidence you intend to rely on at least five business days before the hearing.

I appreciate your reply to this email confirming your ability to meet on the referenced day.

Thank you,

D. Shamrell

Danelle Shamrell

Director of Human Resources

775-482-7242 Direct Line
Tonopah

PO Box 3400; 101 Radar Road

Tonopah, NV 89049

775-293-1707 Mobile

775-751-6309 Fax

2100 E. Walt Williams Drive, #110

Pahrump, NV 89048

775-751-6303 Direct Line
Pahrump

775-751-6309 Fax

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From: Michael Vieta-Kabell <mvkabell@gmail.com>

Sent: Monday, September 23, 2019 2:57 PM

To: Danelle Shamrell <dshamrell@co.nye.nv.us>; Timothy Sutton <tsutton@co.nye.nv.us>; Christopher R. Arabia <crarabia@co.nye.nv.us>; RYanne Gott <rgott@co.nye.nv.us>

Subject: Appeal of dismissal

I am hereby filing the attached appeal of my dismissal.

--

Michael Vieta-Kabell

--

Michael Vieta-Kabell

EXHIBIT D

EXHIBIT D

Christopher R. Arabia

From: Christopher R. Arabia
Sent: Tuesday, September 24, 2019 4:42 PM
To: Danelle Shamrell
Cc: Timothy Sutton
Subject: Vieta-Kabell

Danelle,

It is my legal opinion as the Nye County District Attorney that you must cease and desist from conducting the proposed hearing.

The proposed hearing is improper under NRS 252.070. Mr. Vieta-Kabell was an at-will employee appointed (as opposed to hired) by the District Attorney's Office and terminable at any time with or without cause. See NRS 252.070, Nye County Board of County Commissioners Resolution 95-022, and Nye County Policies and Procedures Manual Rev. 5-2017 at p. 141 ("at will" defined). As such, I have the right to revoke Mr. Vieta-Kabell's appointment. See NRS 252.070.

Earlier this year, Mr. Vieta-Kabell asserted under oath that he was an "at will" employee when he gave sworn testimony that his position as Deputy DA did not afford him due process protections against termination of employment. Now he is contradicting his own prior sworn testimony and falsely claiming that he did have such protections.

Please confirm via e-mail no later than 4:00 p.m. on Thursday, September 26, 2019 that you have vacated the proposed hearing regarding Mr. Vieta-Kabell.

Sincerely,

CHRIS ARABIA
NYE COUNTY DISTRICT ATTORNEY
crarabia@co.nye.nv.us

Pahrump Office: 1520 E. Basin Avenue
Pahrump, Nevada 89060
Phone: 775-751-7080
Fax: 775-751-4229

Tonopah Office: 101 Radar Road
Tonopah, Nevada 89049
Phone: 775-482-8166
Fax: 775-482-8175

NYE COUNTY DISTRICT ATTORNEY COMMUNICATION

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EXHIBIT E

EXHIBIT E

Christopher R. Arabia

From: Timothy Sutton
Sent: Tuesday, September 24, 2019 5:43 PM
To: Christopher R. Arabia
Subject: FW: Grievance

Chris, I have personal feelings about the personnel decision you're making but also recognize the fact that it's your office and you can staff and manage it the way you see fit. That being said, I wish you would work with HR in making your disciplinary decisions. There are various CBAs and policies in place that have strict procedures and deadlines. Even outside counsel isn't always aware of our processes and the union attorneys (who are) capitalize on that. Terminate or discipline who you will but please at least follow proper procedure. I'm not saying we do it perfectly but maybe we can at least discuss things together beforehand so we're on the same page procedurally. I don't have to be involved but please at least work with HR. I think we both have the best interests of the county at heart and hate to see us getting involved in unnecessary lawsuits and grievances.

Thanks,

Tim

From: Timothy Sutton
Sent: Tuesday, September 24, 2019 5:18 PM
To: brent huntley <brent@huntleynv.com>
Cc: Danelle Shamrell <dshamrell@co.nye.nv.us>; Christopher R. Arabia <crarabia@co.nye.nv.us>; Bradley Richardson <brichardson@co.nye.nv.us>; Nick Crosby <NCrosby@maclaw.com>
Subject: Grievance

Dear Mr. Huntley – I am in receipt of the Association's Formal Grievance received on Monday, September 16, 2019, regarding a prior grievance submitted by Crystal Barajas. In the Grievance you request the following remedy: [R]ecognition that grievance against DA Arabia is granted and implementation of proper remedies.

The basis of the Grievance states that I was notified of District Attorney Arabia's failure to timely respond to a grievance pursuant to the Collective Bargaining Agreement. You allege that I ignored Article 14(7)(d) of the prior grievance and responded to the merits of the grievance which was not presented to me, as District Attorney Arabia failed to respond.

In reviewing the Grievance and related facts, I am denying the Grievance. It is my understanding District Attorney Arabia, pursuant to the CBA had designated Nick Crosby, with Marquis Aurbach Coffing, as his designee for the Barajas Grievance. There was an apparent miscommunication with respect to this designation and, as a result, a timely response was not provided. Ultimately, a response was provided to you by me on September 13, 2019. Article 14(7)(d) provides that failure to timely respond to a grievance can be excused for "good cause." Given the aforementioned miscommunication between the District Attorney's Office and Mr. Crosby, I believe good cause exists under Article 14(7)(d) to excuse the untimely response. Given this, the Association's instant Grievance that I ignored Article 14(7)(d) is denied.

Sincerely,

Tim

Tim Sutton

Nye County Manager
Pahrump Town Manager
2100 E. Walt Williams Dr., Ste. 100
Pahrump, NV 89048
(775) 751-7075 (Office)
(775) 751-4269 (Desk)
(775) 277-0284 (Cell)
(775) 751-7093 (Fax)
tsutton@co.nye.nv.us

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EXHIBIT F

EXHIBIT F

Christopher R. Arabia

From: Rebecca Bruch <rbruch@etsreno.com>
Sent: Friday, December 27, 2019 4:50 PM
To: Christopher R. Arabia
Subject: RE: followup

11:15 to 11:25 a.m. Let me know if you need anything else. Thank you. Becky

From: Christopher R. Arabia [mailto:crarabia@co.nye.nv.us]
Sent: Friday, December 27, 2019 12:00 PM
To: Rebecca Bruch
Subject: followup

Hello,

If you have any way of telling when during the day the September 25 phone call w Donna Squires re Vieta-Kabell was, that would be helpful.

Thanks,

CHRIS ARABIA
NYE COUNTY DISTRICT ATTORNEY
crarabia@co.nye.nv.us
Pahrump Office: 1520 E. Basin Avenue
Pahrump, Nevada 89060
Phone: 775-751-7080
Fax: 775-751-4229
Tonopah Office: 101 Radar Road
Tonopah, Nevada 89049
Phone: 775-482-8166
Fax: 775-482-8175

NYE COUNTY DISTRICT ATTORNEY COMMUNICATION

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EXHIBIT G

EXHIBIT G

Christopher R. Arabia

From: Danelle Shamrell
Sent: Wednesday, September 25, 2019 3:57 PM
To: Christopher R. Arabia
Cc: Timothy Sutton
Subject: RE: Vieta-Kabell

Received and understood. I will let Michael Vieta-Kabell there will not be a hearing.

Danelle

From: Christopher R. Arabia <crarabia@co.nye.nv.us>
Sent: Tuesday, September 24, 2019 4:42 PM
To: Danelle Shamrell <dshamrell@co.nye.nv.us>
Cc: Timothy Sutton <tsutton@co.nye.nv.us>
Subject: Vieta-Kabell

Danelle,

It is my legal opinion as the Nye County District Attorney that you must cease and desist from conducting the proposed hearing.

The proposed hearing is improper under NRS 252.070. Mr. Vieta-Kabell was an at-will employee appointed (as opposed to hired) by the District Attorney's Office and terminable at any time with or without cause. See NRS 252.070, Nye County Board of County Commissioners Resolution 95-022, and Nye County Policies and Procedures Manual Rev. 5-2017 at p. 141 ("at will" defined). As such, I have the right to revoke Mr. Vieta-Kabell's appointment. See NRS 252.070.

Earlier this year, Mr. Vieta-Kabell asserted under oath that he was an "at will" employee when he gave sworn testimony that his position as Deputy DA did not afford him due process protections against termination of employment. Now he is contradicting his own prior sworn testimony and falsely claiming that he did have such protections.

Please confirm via e-mail no later than 4:00 p.m. on Thursday, September 26, 2019 that you have vacated the proposed hearing regarding Mr. Vieta-Kabell.

Sincerely,

CHRIS ARABIA
NYE COUNTY DISTRICT ATTORNEY
crarabia@co.nye.nv.us
Pahrump Office: 1520 E. Basin Avenue
Pahrump, Nevada 89060
Phone: 775-751-7080
Fax: 775-751-4229
Tonopah Office: 101 Radar Road
Tonopah, Nevada 89049
Phone: 775-482-8166
Fax: 775-482-8175

NYE COUNTY DISTRICT ATTORNEY COMMUNICATION

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EXHIBIT H

EXHIBIT H

Christopher R. Arabia

From: Danelle Shamrell
Sent: Wednesday, September 25, 2019 4:01 PM
To: Michael Vieta-Kabell; Timothy Sutton; Christopher R. Arabia; brent huntley
Subject: RE: Appeal of dismissal

Michael,

Based on direction from Chris Arabia, Nye County District Attorney I have been instructed to cease and desist from conducting the requested hearing and as such there will not be the hearing referenced below.

Danelle

From: Michael Vieta-Kabell <mvkabell@gmail.com>
Sent: Tuesday, September 24, 2019 1:14 PM
To: Danelle Shamrell <dshamrell@co.nye.nv.us>; Timothy Sutton <tsutton@co.nye.nv.us>; Christopher R. Arabia <crarabia@co.nye.nv.us>; brent huntley <brent@huntleynv.com>
Subject: Re: Appeal of dismissal

October 9th works for me. The only caveat is representation. I will advise promptly if I need to change dates to ensure I have counsel present. I have CC'd Brent Huntley on this email in those regards. I have also attached an Amended Notice of Appeal.

On Tue, Sep 24, 2019 at 9:42 AM Danelle Shamrell <dshamrell@co.nye.nv.us> wrote:

All,

The appeal process requires a hearing which I have scheduled for October 9th starting at 1:30 in the Admin Conference room. Please provide a list of witnesses (if any) and any documentary evidence you intend to rely on at least five business days before the hearing.

I appreciate your reply to this email confirming your ability to meet on the referenced day.

Thank you,

D. Shamrell

Danelle Shamrell

Director of Human Resources

775-482-7242 Direct Line
Tonopah

PO Box 3400; 101 Radar Road

Tonopah, NV 89049

775-293-1707 Mobile

775-751-6309 Fax

2100 E. Walk Williams Drive, #110

Pahrump, NV 89048

775-751-6303 Direct Line
Pahrump

775-751-6309 Fax

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From: Michael Vieta-Kabell <mvkabell@gmail.com>

Sent: Monday, September 23, 2019 2:57 PM

To: Danelle Shamrell <dshamrell@co.nye.nv.us>; Timothy Sutton <tsutton@co.nye.nv.us>; Christopher R. Arabia <crrabia@co.nye.nv.us>; RYANNE GOTT <rgott@co.nye.nv.us>

Subject: Appeal of dismissal

I am hereby filing the attached appeal of my dismissal.

Michael Vieta-Kabell

Michael Vieta-Kabell

EXHIBIT I

EXHIBIT I

HUNTLEY LAW

Brent D. Huntley, Esq.
8725 S. Eastern Ave, #200
Las Vegas, NV 89123
(702) 849-2598
brent@huntleynv.com

September 30, 2019

Via Email
Tim Sutton
Nye County Manager
tsutton@co.nye.nv.us

Re: Confidential Settlement offer for Vieta-Kabell Dismissal

Dear Mr. Sutton,

As discussed Friday, we are prepared to make a settlement offer to resolve the claim against Nye County for wrongful termination, retaliation and other matters prior to litigation. Should litigation be required, our demand will drastically increase to fully compensate Mr. Vieta-Kabell for his wrongful dismissal. As discussed below, we believe this settlement offer is more than fair given the clear path to success and likelihood of recovering far greater in damages.

Mr. Vieta-Kabell is willing to accept one hundred and eighty (180) days of pay in lieu of notice, to include all benefits, PERS contribution, health insurance, continued accrual of all leave, etc., with the purchase of an additional three (3) years of service credit in PERS by Nye County on behalf of Mr. Vieta-Kabell. As I mentioned on our telephone call, Nye County provides 180 days for people such as Mr. Vieta-Kabell that have served 10 years in other positions. I believe that time frame was chosen as a direct reflection of the difficulty for someone with such experience to find and obtain a comparable position and benefits with another agency. Moreover, there is a strong likelihood such a position would not include the same PERS benefits, which would lead to significant damages.

This settlement is requested, among other reasons, due to the retaliatory nature of Mr. Vieta-Kabell's termination. Mr. Vieta-Kabell was actively in the process of unionizing with other Deputy District Attorneys in the Nye County District Attorney's Office when he was terminated without cause. The request to unionize is currently pending with the employee management relations board under EMRB case number 2018-012. It is no secret among many people I have talked to in several circles that Mr. Arabia is actively removing anyone that was involved in the effort to unionizing and changing terms of employments in an effort to make unionizing impossible.

HUNTLEY LAW

Brent D. Huntley, Esq.
8725 S. Eastern Ave., #200
Las Vegas, NV 89123
(702) 849-2598
brent@huntleynv.com

Furthermore, Mr. Vieta-Kabell's termination was clearly done with no regard to the law and due process, as set forth in well-established case law, the Nye County Code Chapter 2.38, the Nye County Personnel Policy Manual Section 11, and the Nevada Revised Statutes Chapter 245.

Nye County Code 2.38.040 clearly assigns the authority and responsibility of promulgating, maintaining, and enforcing the Nye County Merit Based Personnel System to the Nye County Manager. However, all personnel decisions in the case of Mr. Vieta-Kabell appear to have been made by District Attorney Arabia without respect to the Merit Based Personnel System. Furthermore, in the aftermath of this termination Nye County acquiesced to District Attorney Arabia further interfering with Mr. Vieta-Kabell's right to due process when he directed Nye County Human Resources to cancel the appeal hearing that Mr. Vieta-Kabell requested, in violation of County Code and Policy, as well as the Nevada Rules of Professional Conduct 1.7(a)(2) and 8.4(d)&(e).

Mr. Vieta-Kabell believes this settlement is reasonable in light of the 180-day standard notice/pay in lieu of notice offered to employees of the county who have been with the county in excess of 10 years under NCC 2.38.030(E)(3). Mr. Vieta-Kabell is also aware that former employee Ronni Boskovich, who had worked as a Deputy District Attorney for less than 2 years, was given 60 days of severance as opposed to the 1 month severance afforded to Mr. Vieta-Kabell, which further evidences the retaliatory nature of Mr. Vieta-Kabell's termination.

This settlement seeks to mitigate damages to Mr. Vieta-Kabell in the form of lost wages, lost retirement credit in the NV PERS system, and further seeks to mitigate damages to Mr. Vieta-Kabell's dependents, specifically Mr. Vieta-Kabell's autistic child. Prior to Mr. Vieta-Kabell's termination, District Attorney Arabia was made personally aware by Mr. Vieta-Kabell that one of his dependent children suffered from developmental delays and autism. By terminating health care coverage for Mr. Vieta-Kabell and by consequence Mr. Vieta-Kabell's disabled son, Mr. Vieta-Kabell's disabled son is exposed to potential damage in the form of disrupted behavioral, occupations, speech-language pathology, and physical therapy services during the developmental phase of his childhood, which may severely impact his long term functioning. Damages from such a result would be considerable.

While we recognize the County is in a tough position dealing with an elected official who appears to have no willingness to follow policies, procedures, law or just good practices in general. Nevertheless, the County is bound to respect the rights of its employees and ensure they treated fairly and, in this case, with due process. This settlement offer is a more-than fair compromise of

HUNTLEY LAW

Brent D. Huntley, Esq.
8725 S. Eastern Ave, #200
Las Vegas, NV 89123
(702) 849-2598
brent@huntleynv.com

the significant damages Mr. Vieta-Kabell has and will continue to incur due to his unlawful termination. This offer will expire on October 15, 2019 or the filing of a complaint against the County, whichever occurs sooner.

Please feel free to contact me to discuss any concerns or questions you may have regarding this settlement offer.

Sincerely,

Huntley Law

A handwritten signature in black ink, appearing to read "Brent D. Huntley", with a long horizontal stroke extending to the right.

Brent D. Huntley, Esq.

1 THOMAS F. PITARO, ESQ.
Nevada Bar No. 1332
2 Kristine.fumolaw@gmail.com
EMILY K. STRAND, ESQ.
3 Nevada Bar No. 15339
emily@fumolaw.com
4 PITARO & FUMO, CHTD.
601 Las Vegas Boulevard
5 Las Vegas, NV 89101
Phone (702) 474-7554
6 Fax (702) 474-4210
Attorneys for Respondent



FILED

JUL 01 2020

STATE BAR OF NEVADA
BY: *B. Felix*
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

v.

CHRISTOPHER ARABIA, ESQ.,

Respondent.

Case No: OBC19-1383

**RESPONDENT'S INITIAL
DISCLOSURES**

15 **COMES NOW**, respondent, Nye County District Attorney Christopher Arabia
16 ("Arabia"), by and through his attorneys of record, THOMAS F. PITARO, Esq. and EMILY K.
17 STRAND, Esq., of the law firm PITARO & FUMO, CHTD., and hereby submits the following
18 list of witnesses and documents which may be offered at the time of the hearing on the above-
19 entitled complaint.

A. Documents.

21 The majority of the documents enclosed with the Complainants disclose were originally
22 provided by the Respondent. As such, at this time, the Respondent very few documents to
23 disclose, however the Respondent reserves the right to provide a Supplemental Disclosure at a
24 later time. Enclosed with this disclosure are affidavits from Marla Zlotek and Bradley Richardson
25 which were used in support of the Respondent's Motion for Summary Judgment.

1 **B. Witnesses.**

- 2 1. Respondent Nye County District Attorney Christopher Arabia, Esq. may testify about
- 3 his job duties and responsibilities as District Attorney, his supervision of Mr. Vieta-
- 4 Kabell, the ongoing problems with Mr. Kabell's insubordination, his ultimate decision
- 5 to terminate Mr. Kabell, and his decision to advise the Nye County Manager not to
- 6 hold a termination hearing.
- 7 2. Chief Deputy District Attorney Marla Zlotek, Esq. may testify about her job duties
- 8 and responsibilities as a Deputy District Attorney, her understanding of the
- 9 employment status of district attorneys, and conversations she participated in
- 10 regarding Mr. Kabell's insubordination and ultimate termination.
- 11 3. Deputy District Attorney Bradley Richardson, Esq. may testify about his job duties
- 12 and responsibilities as a Deputy District Attorney, his understanding of the
- 13 employment status of district attorneys, and conversations he participated in regarding
- 14 Mr. Kabell's insubordination and ultimate termination. His email is
- 15 brichardson@co.nye.nv.us
- 16 4. Nye County Human Resources Director Danelle Shamrell may testify about her job
- 17 duties and responsibilities as Nye County Human Resources Director, her
- 18 understanding of the employment status of district attorneys, and conversations she
- 19 participated in with regard to Mr. Kabell's termination and the denial of his request
- 20 for a hearing. Her telephone number is 775-482-7242 and her email is
- 21 dshamrell@co.nye.nv.us
- 22 5. Nye County Manager Timothy Sutton may testify about his job duties and
- 23 responsibilities as Nye County Manager, his understanding of the employment status
- 24 of district attorneys, and conversations he participated in regarding Mr. Kabell's
- 25 termination and the denial of his request for a hearing. His telephone number is 775-
- 26 751-075 and his email is nyeadmin@co.nye.nv.us
- 27

1 6. Former Deputy District Attorney Michael Vieta-Kabell may testify about his job
2 duties and responsibilities as Nye County Manager, his understanding of the
3 employment status of district attorneys, and conversations he participated in regarding
4 his termination and the denial of his request for a hearing.

5 7. Jeffrey Stempel, Esq. may testify as an expert in attorney ethics and a professor at the
6 UNLV William S. Boyd School of Law. His address is 4505 South Maryland Parkway
7 Box 451003 in Las Vegas, NV 89154-1003 and he can be reached at
8 jeff.stempel@unlv.edu.
9

10 Further, the Respondent reserves the right to supplement this disclosure.

11 DATED this 1st day of July, 2020.

12 /s/ Thomas F. Pitaro
13 Thomas F. Pitaro, Esq.
14 Nevada Bar No. 1332

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

**DECLARATION OF MARLA ZLOTEK, CHIEF DEPUTY DISTRICT ATTORNEY- CIVIL
NYE COUNTY DISTRICT ATTORNEY'S OFFICE**

I, MARLA ZLOTEK, declare under penalty of perjury that the foregoing is true and correct.

1. That I am employed as a Chief Deputy District Attorney for the Nye County District Attorney's office and I have been employed as an attorney in the DA's Office since 1995;
2. That on or about September 2019, former DDA M. Vietta-Kabel (hereinafter DDA) invoked/requested a hearing citing to Nye County Code 2.38.110 and the Nye County Personnel Policy Manual Section 11;
3. That on or about September 24, 2019, the DA received notification by email from the Nye County Human Resources Director that a hearing as requested by the DDA was set;
4. That upon receipt of the email, I, DDA Bradley Richardson, and the DA discussed the issue of whether DDA was entitled to the hearing that he (DDA Michael Vietta-Kabel) requested;
5. That the issues pertinent to the hearing request was discussed with DA Arabia for many hours over more than 1 day and involved numerous meetings, research, analysis and a thorough discussion of the issues involved with the request for a hearing;
6. That DDA(M. Vietta-Kabel) was appointed as a deputy district attorney approximately 10 years ago. DA Arabia terminated his employment thereby revoking his initial appointment pursuant to NRS 252.070.
7. That after much research, analysis and discussion, the DA sent an email to the Human Resources Director to cancel the hearing. The DA's email to cancel the hearing was sent to prevent "illegal action" from occurring by having the hearing for the DDA. Interestingly, the Nye County Human Resources Director did not request that the DA opine regarding the hearing. Rather, the email was sent notifying the DA that the hearing was already set;
8. That after extensive research, analysis and discussion, it was concluded that the DDA was not entitled to a termination hearing. To allow the hearing to proceed in light of the DDA not being legally entitled to a hearing, would be equal to condoning or turning a blind eye to illegal activity of the County;
9. That upon notice by the HR Director that a hearing was set and after concluding that the DDA was not entitled to the hearing, action was taken by the DA whereby he (DA) sent an email to the HR Director to cancel the hearing;
10. That legal arguments were discussed, weighed, and there was a good faith belief that the at-will DDA was not entitled to the hearing that was set by the Human Resource Director;
11. That it is my opinion that the decision was not taken lightly or without careful consideration;

12. That the following was discussed: Nye County Code, NCC 2. Is titled Merit Personnel System. The DDA invoked NCC 2.38.110 for requesting a hearing of the DA's decision to discharge/terminate the DDA. However, NCC 2.38.040 states:

Promulgation of Policies and Procedures

...

F. The Board thus hereby . . . to adopt personnel policies and procedures by administrative actions, subject to the advice and consent of the Board. . . . Such personnel policies and procedures as adopted shall be deemed to be not the making of new law, but instead to be the execution and implementation of the personnel system and policies provided for in this and other applicable ordinances.

13. That the BoCC adopted what is known as the Nye County Personnel Policy Manual ("PPM"). It has been revised many times over the years. The definition of "at will" employee states "At-Will: Employment status wherein the employee may be terminated at any time, with or without cause. An employee in an at-will status . . . and is not covered by the provisions of the discipline, layoff, or dispute resolution sections of these personnel policies.";

13. That Section 11 of the PPM is titled Disciplinary Actions and Appeals and Section 12 is titled Dispute Resolution. Section 12. Dispute Resolution clearly states that "termination of an at-will employee" is excluded from the Dispute Resolution provision;


14. That the DDA testified at an EMRB hearing that he was an at-will employee. The DDA testified that the concerns for unionization was to have protection from outright termination;

15. That NRS 252.070 states: "(1) All district attorneys may appoint deputies . . . (3) All appointment of deputies must be in writing . . . be recorded in office of recorder . . . (6) In county whose population is 700,000 or more deputies governed by merit personnel systems;

16. That the Senate minutes (1993) regarding subsection 6 above contained testimony from Clark County official stating that there were almost 100 deputy DA's and that he would like to bring them into the merit program so that there was uniform hiring, discipline and discharge. Senator Raggio did not favor this policy. He stated that historically, the DA has the right to appoint or retain, upon election, the deputy DA's. Senator Raggio wondered and asked, "Why this was proposed?" His hunch was that if passed, it would prohibit a new DA of Clark County from appointing or removing DDA's. Mr. Graham stated that "smaller counties this would not be appropriate because those offices were run like a small law firm.";

Executed this 1st day of June, 2020.

Marla Zlotek, Chief Deputy District Attorney – Civil
Nye County District Attorney's Office



DECLARATION OF BRADLEY J. RICHARDSON, ESQ.

I, Bradley J. Richardson, make this Declaration under penalty of perjury under the laws of the State of Nevada and hereby declare as follows:

1. I am submitting this Declaration for consideration in the hearing on the grievance in Nevada State Bar Case No. OBC-20-1383.

2. I have personal knowledge of the following related facts and would be competent to testify to the facts as stated herein and would do so if requested. As to those matters stated on information and belief, I do believe them to be true to the best of my knowledge.

3. I can assure everyone that the attorneys advising the District Attorney about Mr. Vieta-Kabell's demand for a hearing had thoroughly researched the issue of whether Mr. Vieta-Kabell was an "at-will" employee and the issue of whether "at-will" employees were entitled to a hearing.

3. I was admitted to the Nevada State Bar in 1977 and admitted to the Kansas State Bar in 1978.

4. I have been employed as a Nye County Deputy District Attorney since August 28, 2017. Prior to that date, I was a partner at the law firm of Fennemore Craig in their Las Vegas, Nevada office. I am a Martindale-Hubbell AV Preeminent rated attorney. I was of a member of the State Bar of Nevada Standing Committee on Ethics and Professional Responsibility from approximately August 2008 to August 2017. I was chair of that committee for two years during that period. While serving on that committee, I had the great opportunity to be a regular speaker for the Nevada State Bar on the subject of professional ethics.

5. Significantly, on February 5, 2019, a litigation non-meeting took place in Tonopah before a regularly scheduled Board of County Commission meeting. Marc Ricciardi, the attorney hired by the County to advise the County regarding the litigation with the DDA's, was present by telephone. District Attorney Chris Arabia and I were present in person. Chief Deputy District Attorney Marla Zlotek appeared by telephone. D.A. Chris Arabia explained to the Commissioners that the DDA's were at-will employees and would not likely succeed in the EMRB litigation. Marc Ricciardi participated in the discussion of this matter. The County Commissioners tabled the agenda

1 item to approve a settlement agreement. It must be noted that, subsequently, the DDA's lost their
2 EMRB case.

3 6. A day later, on February 6, 2019, Mr. Ricciardi informed County Manager Tim
4 Sutton that he would not be further representing the County in the EMRB action.

5 7. On February 6, 2019 Ricciardi forwarded to me the memo dated March 10, 2018
6 which he sent County Manager Tim Sutton informing Mr. Sutton of the County's likelihood of
7 success. See Exhibit 1 attached. As far as I know, the memo was never shared with the DA's office
8 until Mark Ricciardi sent it to me. The memo is significant, in part, because the memo informs the
9 County Manager that Mr. Ricciardi shares then District Attorney Angela Bello's opinion that NRS
10 252.070 controlled the issue of whether the DDA's could obtain a "for cause" termination benefit
11 and that this benefit was not likely available to the DDA's per the statute.

12 8. On February 19, 2019 the BoCC approved Nick Crosby being retained by as counsel
13 in the NCMEA case.

14 9. I believe it is significant that Chris Arabia, Marla Zlotek and I had a conference call
15 with attorney Rebecca Bruch on or about March 21, 2019. We sought her advice on dealing with
16 questions related to the handling of employment issues with the Nye County Deputy District
17 Attorneys who were handling criminal matters. Ms. Bruch told the three of us that she could only
18 advise the County and its Commissioners regarding these issues and therefore she could not advise
19 the District Attorney's office about this topic. I am informed and therefore believe that Ms. Bruch
20 did consult with the County Manager about the DDA litigation.

21 10. In March of 2019, I contacted former Clark County Chief Deputy District Attorney
22 Ben Graham. He and I had worked together when I was employed by the Clark County District
23 Attorney between the years 1979 to 1981. Mr. Graham explained how it was necessary to obtain
24 legislation to achieve a "for cause termination" benefit for DDA's.

25 11. Mr. Graham said that he was requested in early 1993, by District Attorney Rex Bell,
26 to seek an amendment to NRS 252.070 to provide a "for cause termination" benefit for the Clark
27 County Deputy District Attorneys. Mr. Graham said that the legislature was already in session when
28 he received this request. Mr. Graham was employed by the Clark County District Attorney and also

1 lobbied for Clark County matters while the legislature was in session. Mr. Graham confirmed the
2 details of the legislative meeting minutes of 1993 and advised me that it required legislative action
3 for the Nye County District Attorneys to obtain such a benefit. Mr. Graham and attorney Matt
4 Callister (who was a Nevada state senator at that time) got the legislation passed over William
5 Raggio's opposition. Mr. Raggio was a former Washoe County District Attorney.

6 12. I was present at the EMRB hearing on April 9, 2019 and listened to Michael Vieta-
7 Kabell's testimony. It was apparent that he believed the only way he could obtain a "for cause"
8 termination benefit was to be accreted into the existing NCMEA union whose members already had
9 that benefit. It was apparent to me at the conclusion of the hearing that the EMRB was not likely to
10 grant the DDA's request to accrete into the NCMEA union and the DDA's would be denied the "for
11 cause termination" benefit they were seeking. This turned out to be the ruling of the EMRB.

12 13. I am informed and therefore believe that there was a Litigation meeting during an
13 intermission from the BoCC regular meeting in Tonopah on May 7, 2019. I am informed and
14 therefore believe that at that closed meeting, Becky Bruch addressed the County Commissioners
15 about the EMRB litigation. Tim Sutton, the County Manager was also in attendance. I am also
16 informed and therefore believe that Ms. Bruch stated that the Commissioners should settle the
17 EMRB case even though the EMRB hearing had already taken place. I, along with attorney Nick
18 Crosby (who represented the DAs office at the hearing), thought it had gone well for the County
19 and that a decision from the EMRB was expected by early June. The important thing about this
20 meeting is it demonstrates that outside counsel Becky Bruch, was providing advice to the
21 Commissioners on the employment issues with the DDA's. It also shows that, despite the fact that
22 we believed that the hearing went well, the County Manager and outside counsel seemed to be
23 pushing to settle the matter in a manner adverse to the DA's office.

24 14. In July of 2019, Rebecca Bruch acknowledged to myself and Marla Zlotek that she
25 was reviewing a records request from Ronni Boskovich's father, Ron Boskovich, (which request
26 was related to Boskovich's EMRB action) on behalf of Nye County. Ms. Bruch also acknowledged
27 that she had been provided copies of my emails (unbeknownst to me) concerning Ms. Boskovich
28

1 and the EMRB case. Again, it appeared that Ms. Bruch was advising the County about the labor
2 dispute with the DDA's.

3 15. After Mr. Vieta-Kabell made his request for a hearing under the Nye County Code
4 and the County Personal Policy Manual, Ms. Zlotek and I looked at County Personal Policy Manual
5 and determined that there was no provision for an at-will employee, as a matter of law, to receive
6 such a hearing. In fact, Section 12 of the County Personal Policy Manual, titled Dispute Resolution,
7 clearly states that "termination of an at-will employee" is excluded from the Dispute Resolution
8 provision. We believed that it was our obligation to so inform the County Manager of our opinion
9 and we believed we were entitled to so inform the County Manager.

10 Dated this 30th day of March, 2020.

11 
12 BRADLEY J. RICHARDSON, ESQ.
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Exhibit 1 to Declaration of Bradley J. Richardson

Exhibit 1 to Declaration of Bradley J. Richardson



CONFIDENTIAL ATTORNEY CLIENT PRIVILEGE

MEMORANDUM

To: Tim Sutton
From: Mark J. Ricciardi
Date: March 10, 2018
Subject: Deputy District Attorneys Demand for Recognition
Client/Matter: 20596.0002

I have carefully reviewed Angela Bello's email of March 7 and I have also reviewed several of the relevant statutes and EMRB cases and the Clark and Washoe CBAs that cover Deputy District Attorneys, (DDAs).

Angela is correct that under NRS 288.170 the primary criteria for the EMRB's bargaining unit determination is whether there is a community of interest among the employees concerned. The union's argument is that the DDAs have a sufficient community of interest with the other County management employees represented by the NCMEA. The County certainly has the ability to disagree. We should be entitled to a hearing before the EMRB on the community of interest issue.

One big factor in the community of interest analysis is whether there is a similarity of wages and benefits. I believe (but I am not certain) that the wage scale and benefits of the DDAs are the same or substantially similar to the NCMEA employees. If that is true that certainly weighs in favor of a finding of community of interest between the two groups. However, there is much more to the community of interest analysis. The EMRB considers, among other things, similarities in duties, skills, working conditions, job classifications, the amount of interchange or transfer of employees, integration of an employer's operations, supervision of employees, geographic proximity, common objectives in providing services, personnel policy, frequency of contact among employees and the desires of affected employees.

Note that if the EMRB finds that there is a community of interest between the new group and an existing "wall-to-wall" unit, the EMRB generally favors the larger wall-to-wall unit to minimize the practical difficulties on a local government employer that results from a proliferation of bargaining units and as a safeguard for employees against diluted effectiveness caused by smaller and fragmented bargaining units.

Fisher & Phillips LLP

Atlanta • Baltimore • Boston • Charlotte • Chicago • Cleveland • Columbia • Columbus • Dallas • Denver • Fort Lauderdale • Galtport • Houston
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Memo to Tim Sutton
Re: Deputy District Attorneys Demand for Recognition
March 10, 2018
Page 2

Of course the EMRB, like any tribunal, can weigh the factors in a manner that allows it to back into whatever conclusion it really wants to come to. Attached are two examples of the way the EMRB handles the analysis (Truckee Meadows and Nye County JPOs).

I think here we could make a good case that there is not a community of interest between the DDAs and the NCMEA employees. This would be a new bargaining unit and the County would be justified in bargaining hard on the first CBA—why should the DDAs get same contract as those who have benefitted from the long term bargaining relationship between the County and the current management employees.

Here is why I did not originally suggest a fight over the bargaining unit: if we don't bargain hard and ultimately a CBA for the DDAs would end up looking very much like the NCMEA agreement, why would the County wish use resources to fight for a separate unit and then if successful use resources to negotiate separately with another group during each bargaining cycle.

However I completely see Angela's point that her operation is very different from other County departments. There are statutes very specifically relating to her duties and the way she must appoint deputies—see 252.070 attached. Also note that the Attorney General has certain supervisory authority over the DA—see NRS 228.120 attached. It is also true that I know of no other DDA group that has been lumped into a general County bargaining unit.

I suppose the ultimate decision is up to you and the Commission. Disagreements between the Commission and DA likely come up from time to time but the Commission must choose its battles and I don't know if this one is worth fighting with Angela. I am happy to argue that the DDAs should be a separate bargaining unit and take it to an EMRB proceeding if necessary. Then during bargaining we can certainly be as tough as the County wants to be in negotiating a first CBA. It might be worth showing these DDAs that if they really want to fight to be part of the NCMEA bargaining unit, the six of them (or possibly the entire NCMEA membership if they cared enough), would need to pay attorney Levine's legal fees to take this to the EMRB. Perhaps when they consider the expense they will back down and simply bargain a separate agreement for the DDAs.

The other issue is whether the DDAs could really negotiate a just cause provision. It may be that we could make a legal argument pursuant to NRS 252.070 that the DA should have the unfettered right to revoke an appointment. However even Angela seems to agree that the issue is not currently before us.

I am happy to discuss whenever you are ready.

1 **RPL**
2 THOMAS F. PITARO, ESQ.
3 Nevada Bar No. 1332
4 Kristine.fumolaw@gmail.com
5 EMILY K. STRAND, ESQ.
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11 Phone (702) 474-7554
12 Fax (702) 474-4210
13 Attorneys for Respondent



FILED

JUL 07 2020

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

8 **STATE BAR OF NEVADA**

9 **SOUTHERN NEVADA DISCIPLINARY BOARD**

10 STATE BAR OF NEVADA,

11 Complainant,

12 v.

13 CHRISTOPHER ARABIA, ESQ.,

14 Respondent.

REPLY TO STATE BAR'S
OPPOSITION TO RESPONDENT'S
MOTION FOR SUMMARY
JUDGMENT

15
16 **COMES NOW**, respondent, District Attorney Christopher Arabia, by and through his
17 attorneys of record, THOMAS F. PITARO, Esq. and EMILY K. STRAND, Esq., of the law firm
18 PITARO & FUMO, CHTD., and hereby files this Reply to the State Bar's Opposition to Summary
19 Judgment. This Reply is based upon the filing and pleadings herein, the attached Memorandum
20 of Points and Authorities, and oral argument deemed necessary by the Chair.

21 DATED this 6th day of July, 2020.

22 Respectfully submitted,

23 /s/ Thomas F. Pitaro
24 Thomas F. Pitaro, Esq.
25 Nevada Bar No. 1332

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

26 *Attorneys for Respondent*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The State Bar argues that the disciplinary matter does not require analysis of District
3 Attorney Arabia's termination of Vieta-Kabell. Instead the Bar argues that the panel should focus
4 solely on deciding whether District Attorney Arabia violated the rules of professional conduct
5 when he issued a directive as to whether a hearing could be conducted to consider the propriety
6 of his termination of Kabell. The fact of the matter is that the two are so intertwined that they are
7 almost inseparable.

8 RPC 1.7 applies when there is a "significant risk" of a conflict materially limiting a
9 lawyer's responsibilities to a client. Pursuant to ABA Annotated Model Rules of Professional
10 Conduct, 9th Ed., Rule 1.7, Comment 10 "if the probity of a lawyer's own conduct in a transaction
11 is in *serious* question, it may be difficult or impossible for the lawyer to give a client detached
12 advice." (emphasis added). Thus, in order for there to be a rule violation, the panel must find that
13 the probity of District Attorney Arabia's conduct in terminating Kabell was in *serious* question
14 and thus limited his ability to give detached advice.

15 However, the case law is clear on the issue of whether a Deputy District Attorney who
16 has been fired is entitled to a hearing. District Attorney Arabia was correct when he informed the
17 Nye County Manager that Deputy District Attorneys are at-will employees¹ and thus, not entitled
18 to a hearing by law.

19 Even assuming, arguendo, that the State Bar is correct and that there was a risk that District
20 Attorney Arabia's advice was limited by his supposed fear/concern over the hearing, there is no
21 evidence to show that the risk was *significant*, to the point of *materially* limiting DA Arabia's
22 responsibilities to Nye County. District Attorney Arabia is an experienced attorney with
23 experience from countless contested hearings and trials and thus, it is unlikely that the mere
24 possibility of having his opinion questioned would strike in him the level of fear or concern
25 necessary to significantly or materially limit his ability to meet his responsibilities to the people

26 _____
27 ¹ See *Wayment v. Holmes*, 112 Nev. 232, 912 P.2d 816 (1996).

1 of Nye Count. Moreover, the information he provided the manager was legally correct and thus
2 is extremely unlikely that another attorney would have given a different opinion on the matter.

3 As such, no reasonable trier of fact can possibly conclude that District Attorney Arabia
4 violated the rules of professional conduct with his actions. As such, summary judgment is
5 appropriate as a matter of law.

6 DATED this 6th day of July, 2020.

7 Respectfully submitted,

8 /s/ Thomas F. Pitaro
9 Thomas F. Pitaro, Esq.
10 Nevada Bar No. 1332

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

11 *Attorneys for Respondent*
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Case Nos: OBC19-1383



FILED

JUL 10 2020

STATE BAR OF NEVADA
BY: *B. Felix*
OFFICE OF BAR COUNSEL

**STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA,

Complainant,

vs.

CHRISTOPHER ARABIA, ESQ.

NV BAR No.9749

Respondent.

**ORDER APPOINTING
FORMAL HEARING PANEL**

IT IS HEREBY ORDERED that the following members of the Southern Nevada Disciplinary Board have been designated as members of the formal hearing panel in the above-entitled action. The hearing will be convened on the 31st day of August, 2020 starting at 9:00 a.m. via Zoom Video Conferencing.

1. Marc Cook, Esq., Chair;
2. Jason Maier, Esq.
3. Anne Kingsley, Laymember

DATED this 9 day of July, 2020.

STATE BAR OF NEVADA

By: *Kenneth E Hogan*
Kenneth E Hogan (Jul 9, 2020 15:31 PDT)
Kenneth E. Hogan, Esq.
Nevada Bar No. 10083
Chair, Southern Nevada Disciplinary Board






Hearing Pnl Ord_Arabia

Final Audit Report

2020-07-09

Created:	2020-07-09
By:	Cathi Britz (cathib@nvbar.org)
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"Hearing Pnl Ord_Arabia" History

-  Document created by Cathi Britz (cathib@nvbar.org)
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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies a true and correct copy of the foregoing
3 **ORDER APPOINTING FORMAL HEARING PANEL** was served via email to:

- 4 1. Marc Cook, Esq. (Panel Chair): mcook@bckltd.com; SLopan@bckltd.com
5 2. Jason Maier, Esq. (Panel Member): jrm@mgalaw.com; cmj@mgalaw.com
6 3. Anne Kingsley (Laymember): Anne.kingsley@unlv.edu
7 4. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
8 emily@fumolaw.com; pitaro@gmail.com.
9 5. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

10 Dated this 10th day of July, 2020.

11 

12 _____
13 Kristi Faust, an employee
14 of the State Bar of Nevada
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1 **BRIEF**

2 THOMAS F. PITARO, ESQ.
3 Nevada Bar No. 1332
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13 Attorneys for Respondent



8 **STATE BAR OF NEVADA**

9 **SOUTHERN NEVADA DISCIPLINARY BOARD**

10 STATE BAR OF NEVADA,

11 Complainant,

12 v.

13 CHRISTOPHER ARABIA, ESQ.,

14 Respondent.

BRIEF IN SUPPORT OF
RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT

15
16 **COMES NOW**, respondent, District Attorney Christopher Arabia, by and through his
17 attorneys of record, THOMAS F. PITARO, ESQ. and EMILY K. STRAND, ESQ., of the law
18 firm PITARO & FUMO, CHTD., and hereby submits this Brief in Support of Respondent's
19 Motion for Summary Judgment.

20 DATED this 20th day of July, 2020.

21 Respectfully submitted,

22 /s/ Thomas F. Pitaro
23 Thomas F. Pitaro, Esq.
24 Nevada Bar No. 1332

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

25 *Attorneys for Respondent*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Issues Presented for Review**

3 A. Is the Board of Governor's Chairman's May 14, 2020 order the law of the case? If
4 so, to what extent?

5 B. What factual information is in the record to dispute that "the Respondent's
6 communication was complete and accurate (as to the absence of the right of a
7 Deputy District Attorney to a termination appeal)...?"

8 **II. Mr. Hogan's decision on May 14, 2020 is not the law of the case.**

9 A. The "law of the case" doctrine would not apply until the respondent's first appeal,
10 as outlined in the *Hall* decision.

11 The "Law of the Case" doctrine belongs to the same family of preclusion doctrines that
12 include collateral estoppel, res judicata, and stare decisis.¹ Under the doctrine, when an issue is
13 decided in a particular case, the parties of that case cannot relitigate the same issue in any
14 subsequent proceeding.² In Nevada, the first appeal from a case becomes the law of the case on
15 all subsequent appeals. *Hall v. State*, 535 P.2d 797, 798 (Nev. 1975). Here, the Motion for
16 Summary Judgment is not an appeal from the denial of the Motion to Dismiss and the two have
17 different standards and considerations. As such, the "law of the case" doctrine does not apply.

18 B. The Hearing Board Chair's authority only covers decisions prior to the
19 designation of the hearing panel.

20 Pursuant to Nevada Supreme Court Rule (NSCR) 103, the chair of each disciplinary board
21 shall preside over all motions or other requests relating to pending proceedings until such time as
22 a hearing panel chair is designated to preside over the proceeding, as provided in Rule 103(6).

23
24 ¹ Joan Steinman, *Law of the Case: A Judicial Puzzle In Consolidated and Transferred Cases and*
in Multidistrict Litigation, 135 U. PA. L. REV. 595, 598 (1987).

25 ² *Id.* at 597-98; Note, *An Alternative Analysis of Law of the Case: Rethinking Loveday v. State*,
26 44 MD. L. REV. 177, 180 (1985).

1 (emphasis added). Thus because a hearing panel chair has been designated to preside over the
2 proceeding in this case, the Chair from the Board of Governor's no longer has jurisdiction. Thus,
3 while his ruling may be persuasive, it is not binding, as to do so would usurp the power from the
4 hearing panel chair in violation of Rule 103(6).

5
6 C. All administrative decisions by boards and committees for the State Bar are
merely recommendations to the Nevada Supreme Court.

7 While the Nevada Supreme Court has delegated tasks to the disciplinary board, ultimately,
8 all decisions rendered by bar committees/boards are advisory and thus not binding. For example,
9 except for disbarments by consent a decision recommending a public reprimand, suspension
10 or disbarment shall be automatically reviewed *de novo* by the supreme court. NSCR 105(3).
11 Similarly, pursuant to NSCR 224, the Standing Committee on Professional Responsibility may
12 assist members of the state bar to appreciate, understand, and adhere to ethical and professional
13 standards of conduct by issuing advisory opinions on the ethical propriety of hypothetical attorney
14 conduct, and may assist the Supreme Court and board of governors by studying and
15 recommending additions, amendments, or repeal of rules of professional conduct, however,
16 proposed opinions by the Ethics Committee may only be approved if at least five members of the
17 committee agree and they must include the following statement:

18 "This opinion is issued by the standing committee on ethics and professional
19 responsibility of the State Bar of Nevada, pursuant to S.C.R. 225. It is advisory only.
20 It is not binding upon the courts, the State Bar of Nevada, its board of governors,
any persons or tribunals charged with regulatory responsibilities, or any member of
the state bar."

21 The Supreme Court's decision to reserve the final decision regarding the outcome of
22 administrative hearings to themselves is not unique. The Supreme Court and other Nevada
23 judiciaries have final authority over the outcome of a variety of administrative hearings, especially
24 in cases involving professional misconduct. For example, before an insurance agent, bail
25 bondsman, or surety can be disciplined by the Nevada Division of Insurance, he or she has the
26 right to have the recommendation of the administrative agency reviewed by a District Court Judge
27 pursuant to NRS 233B.130. Similarly, decisions by the Public Utilities Commission of Nevada

1 are subject to judicial review pursuant to NRS 703.373. Those who apply for unemployment
2 benefits and are denied are entitled to judicial review pursuant to NRS 612.525. Finally, a person
3 who is denied a driver's license or whose license is cancelled, suspended, or revoked is entitled
4 to judicial review pursuant to NRS 483.520.

5 Thus, because the decisions by administrative panels and offices are not binding on the
6 judiciary or even the Respondent until the Nevada Supreme Court affirms them, the Respondent
7 would argue that they should not be binding on the subsequent hearing panel chair either. In order
8 to be law of the case, the decision by the Chairman Hogan would need to be ratified by the
9 Supreme Court first.

10 D. If the hearing board chairman's decisions was the law of the case, it would
11 preclude the Respondent from presenting affirmative defenses in violation of his
rights.

12 In his decision to deny the Motion to Dismiss, Chairman Hogan stated that as a matter of
13 law, qualified immunity does not apply to disciplinary proceedings. *Order*, pg. 3, lines 4-6.
14 However, he went on to say that even if it did, qualified immunity is an affirmative defense which
15 much be proven during the hearing. Thus, if Chairman Hogan's decisions that qualified immunity
16 is not applicable became the law of the case, it would preclude the Respondent from raising that
17 defense during the hearing which would be a violation of the Respondent's right to utilize all
18 available defenses to defend himself.

19
20 **III. There is no factual information in the record to dispute that District Attorney**
Arabia's advice to the Nye County Manager was complete and accurate.

21 In his email to the Nye County Manager, District Attorney Arabia stated that the hearing
22 that Mr. Vieta-Kabell was demanding was improper under NRS 252.070 because Mr. Vieta-
23 Kabell was an at-will employee and thus terminable without a hearing. He also cited to the Nye
24 County Board of County Commissioners Resolution 95-022, and Nye County Policies and
25 Procedures Manual Rev. 5-2017 for the definition of "at will."

26 NRS 252.070(1) reads in pertinent part: "all district attorneys may appoint deputies, who
27 are authorized to transact all official business relating to those duties of the officeto the same

1 extent as their principals and perform such other duties as the district attorney may from time to
2 time direct.....”

3 NRS 252.070(3) states that “All appointments of deputies under the provisions of this
4 section mustbe recorded in the office of the recorder.... Revocations of those appointments
5 must also be recorded as provided in this section. From the time of the recording of the
6 appointments or revocations therein, persons shall be deemed to have notice of the appointments
7 or revocations.” (emphasis added). Thus pursuant to NRS 252.070, the District Attorney has to
8 sole discretion to appoint and revoke the appointments of Deputy District Attorneys.

9 Next, the Nye County Policies and Procedures Manual defines “at will” as:

10 “Employment status wherein the employee may be terminated at any time, with or without
11 cause. An employee in an at-will status has neither a property right nor an expectation of
12 continued employment with Nye County and is not covered by the provisions of the
discipline, layoff, or dispute resolution sections of these personnel policies.”

13 Thus, based on NRS 252.070 and the Nye County Policies and Procedures Manual, it is
14 clear that deputy district attorneys meet the definition of at-will employees. This fact is only
15 further proved by Mr. Vieta-Kabell’s own testimony at a hearing in support of unionization
16 wherein he stated the one of the reasons the District Attorney’s sought to unionize was so that
17 they could be afforded due process protections from termination similar to those already given to
18 other state employees.³ Additionally, District Attorney Arabia sought out the advice of two of his
19 Chief Deputy District Attorney’s in interpreting the law, prior to sending his email to the Nye
20 County Manager. Thus, the email DA Arabia sent was based not only on his own belief regarding
21 the law, but also the beliefs and advice of two other District Attorney’s as well.

22 In short, the State Bar cannot point to a single shred of evidence to support the claim that
23 District Attorney Arabia’s advice to the Nye County Manager was an incorrect statement of law
24 or that Mr. Vieta-Kabell was actually entitled to a hearing.

25
26
27 ³ See Nye County Management Employees Assoc. v. Nye County, Case No. 2018-012.

1 **IV. Conclusion**

2 As no genuine issue of material fact exists in this case, the Respondent is entitled to summary
3 judgment as a matter of law. The Complainant cannot prove there was a conflict of interest let
4 alone that the Respondent violated his ethical duties. Moreover, the Respondent is entitled to
5 immunity for his discretionary decisions as the District Attorney of Nye County. Thus, this
6 Honorable Court should enter a judgment in favor of the Respondent.

7 DATED this 20th day of July, 2020.

8 Respectfully submitted,

9 /s/ Thomas F. Pitaro
10 Thomas F. Pitaro, Esq.
11 Nevada Bar No. 1332

/s/ Emily K. Strand
 Emily K. Strand, Esq.
 Nevada Bar No. 15339

12 *Attorneys for Respondent*
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Case No: OBC19-1383



STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
vs.)
CHRISTOPHER ARABIA, ESQ.,)
BAR NO. 9749)
Respondent.)

SUPPLEMENTAL BRIEF IN
OPPOSITION TO RESPONDENT'S
MOTION FOR SUMMARY
JUDGMENT

The State Bar of Nevada, by and through Assistant Bar Counsel R. Kait Flocchini, hereby supplements its response to Respondent's Motion for Summary Judgment as invited by Chair Cook.

This Supplement is based on the following Memorandum of Points and Authorities, the pleadings in this matter, and any oral argument requested by the Board Chair.

MEMORANDUM OF POINTS AND AUTHORITIES

Chair Cook asked for additional briefing on two topics (i) is the Board Chair's Order denying the Motion to Dismiss the 'law of the case' and (ii) what factual information disputes that "the Respondent's communication was complete and accurate (as to the absence of right

1 of a Deputy District Attorney to a termination appeal). The State Bar addresses each topic
2 below.

3 **Law of the Case**

4 “In the absence of statute the phrase, 'law of the case,' as applied to the effect of previous
5 orders on the later action of the court rendering them in the same case, merely expresses the
6 practice of courts generally to refuse to reopen what has been decided, not a limit to their
7 power.” *Rosewell Messinger v. Peter Anderson*, 225 U.S. 436, 444, 32 S.Ct. 739, (1912)
8 (citations omitted).

9 The Nevada Supreme Court has applied the ‘law of the case’ doctrine finding that “when
10 an appellate court decides a principle or rule of law, that decision governs the same issues in
11 subsequent proceedings in that case.” *Dictor v. Creative Management Services*, 223 P.3d 332
12 (Nev. 2010). Further, Rule 40 of the Nevada Rules of Appellate Procedure (“NRAP”) requires
13 that any petition for rehearing “state briefly and with particularity the points of law or fact that
14 the petitioner believes the court has overlooked or misapprehended”, with reference to
15 evidence or controlling authority that supports the petitioners argument.

16 Finally, Rule 2.24 of the Eighth Judicial District Court Rules (“EJDCR”) requires a party
17 to seek leave for an issue to be reconsidered by the Court. This rule protects against the misuse
18 of judicial resources to re-litigate already decided matters. The EJDCRs do not apply in
19 disciplinary matters, but the principle is sound and Rule 2.24 could be considered persuasive
20 authority supporting the application of the ‘law of the case’ doctrine in this matter.

21 The Motion for Summary Judgment argues the protection of governmental immunity
22 in virtually the same exact words as the Motion to Dismiss. *Compare* Motion to Dismiss
23 (“MTD”), 4:8-27 and Motion for Summary Judgment (“MSJ”), 5:18-6:10; MTD at 6:23-7:1 and
24 MSJ at 6:11-16; MTD at 7:5-11 and MSJ 6:17-23; and MTD at 7:20-8:2 and MSJ at 7:17-23..
25 The Board Chair considered all arguments presented and issued a substantive decision that

1 governmental immunity did not insulate Respondent from potential sanctions for violating the
2 Rules of Professional Conduct. There was no change in the arguments; there should be no
3 change in the result. To find otherwise is to invite a constant re-litigation of issues which is
4 contrary to the law-of-the-case doctrine and the principles of NRAP 40 and EJDRC 2.24.

5 **Analysis of Whether RPC 1.7 (Conflict of Interest: Current Clients) was Violated**
6 **Does Not Require Evaluating Whether Respondent's Application of NRS 252.070**
7 **is Correct.**

8 It cannot be said enough times: This disciplinary matter is not about the termination of
9 a Deputy District Attorney; it is about Respondent's conduct thereafter. Respondent's reaction
10 to the scheduling of a hearing for Kabell's appeal was to demand Nye County "cease and desist"
11 holding the hearing. See Email dated September 22, 2019, attached as Exhibit E to the MSJ,
12 and cited in the Complaint at ¶6. Respondent stated, "I have the right to" engage in particular
13 conduct, and therefore, any hearing was "improper." *Id.* He then required that the scheduled
14 hearing be vacated within 48 hours. See *id.* This is the conduct at issue.

15 RPC 1.7 can be violated even if no client suffers harm. Compare ABA Standards for
16 Imposing Lawyer Sanctions, Standard 4.32 ("Suspension is generally appropriate when a
17 lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect
18 of that conflict, and causes injury or potential injury to a client"), Standard 4.33 ("Reprimand
19 is generally appropriate when a lawyer is negligent in determining whether the representation
20 of a client may be materially affected by the lawyer's own interests . . . and causes injury or
21 potential injury to a client."), and Standard 4.34 ("Admonition is generally appropriate when
22 a lawyer engages in an isolated instance of negligence in determining whether the
23 representation of a client may be materially affected by the lawyer's own interest . . . and causes
24 little or no actual or potential injury to a client.") A lawyer's duty of loyalty to a client is
25 embodied in his obligation to provide conflict-free representation or obtain informed consent

1 to proceed despite a *potential* conflict. See Annotated Model Rules of Professional Conduct,
2 RPC 1.7, Comment [1] and [10] (9th ed. 2019). Crucial to analyzing a conflict under RPC 1.7 is
3 the perception that the lawyer is advocating fully for the client's benefit, not the benefit of
4 another client, a former client, a third person, or himself. See *e.g.* Annotated Model Rules of
5 Professional Conduct, pg. 159 ("Government-Entity Consent") (9th ed. 2019). The propriety of
6 the advocacy is irrelevant if the perception is that the advocacy is skewed.

7 A Panel's decision to sanction a lawyer for violating the Rules of Professional Conduct
8 must include a finding of (i) a violation, (ii) the lawyer's mental state, (iii) the injury or potential
9 injury caused by the violation, and the weighing of aggravating or mitigating factors. See *In re*
10 *Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1078 (2008). Respondent's argument
11 that his advice was correct ignores the first two elements of the disciplinary analysis: did the
12 giving of 'advice' violate a RPC and if so, what was Respondent's mental state when he issued
13 the 'advisory' cease-and-desist email. Whether Respondent's legal interpretation of NRS
14 252.070 is correct would only affect the injury or potential injury caused by his cease-and-
15 desist email. ABA Standards 4.32-4.34, referenced above, evidence that even if the Panel found
16 that there was no injury because of Respondent's cease-and-desist email, it only affects the
17 level of sanction warranted by the misconduct and it does not negate that misconduct occurred.

18 ///

20 ///

22 ///

24 ///

1 **Conclusion**

2 The State Bar appreciates the opportunity to provide supplemental briefing.

3 The issue of governmental immunity should not be re-litigated. Respondent has not
4 provided sufficient evidence to show that no reasonable trier-of-fact could find his cease-and-
5 desist email violated RPC 1.7 (Conflict of Interest: Current Clients) and/or RPC 8.4
6 (Misconduct). The Motion for Summary Judgment should be denied.

7 Dated this 20th day of July, 2020.

8 STATE BAR OF NEVADA
9 DANIEL M. HOOGE, Bar Counsel

10 By: 
11 Kait Flocchini (Jul 20, 2020 13:53 PDT)
12 R. Kait Flocchini, Assistant Bar Counsel
13 Nevada Bar No. 9861
14 3100 W. Charleston Blvd, Suite 100
15 Las Vegas, Nevada 89102
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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies a true and correct copy of the foregoing
3 **SUPPLEMENTAL BRIEF IN OPPOSITION TO RESPONDENT'S MOTION**
4 **FOR SUMMARY JUDGMENT** was served via email to:

- 5 1. Marc Cook, Esq. (Panel Chair): mcook@bckltd.com, slopan@bckltd.com
6 2. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
7 emily@fumolaw.com.
8 3. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

9 Dated this 20 day of July, 2020.

10 *Kristi A. Faust*

11

Kristi Faust, an employee
12 of the State Bar of Nevada
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2020.07.20 - SBN Suppl to Opp to MSJ

Final Audit Report

2020-07-20

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Case No: OBC19-1383



FILED

JUL 28 2020

STATE BAR OF NEVADA
BY: *B. Felix*
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
vs.)
CHRISTOPHER ARABIA, ESQ.,)
BAR NO. 9749)
Respondent.)

NOTICE OF FORMAL HEARING

PLEASE TAKE NOTICE that the formal hearing in the above-entitled action has been scheduled for **August 31, 2020, at the hour of 9:00 a.m.** The hearing will be conducted virtually through ZOOM video conference. The State Bar of Nevada will email an access link on August 28, 2020.

Please be further advised that you are entitled to be represented by counsel, to cross-examine witnesses, and to present evidence.

Dated this 28th day of July, 2020.

STATE BAR OF NEVADA
DANIEL M. HOOGE, Bar Counsel

By: *Kait Flocchini*
Kait Flocchini (Jul 28, 2020 10:05 PDT)
R. Kait Flocchini, Assistant Bar Counsel
Nevada Bar No. 9861
3100 W. Charleston Blvd, Suite 100
Las Vegas, Nevada 89102

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CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing

NOTICE OF FORMAL HEARING was served via email to:

1. Marc Cook, Esq. (Panel Chair): mcook@bckltd.com; SLopan@bckltd.com
2. Jason Maier, Esq. (Panel Member): jrm@mgalaw.com; cmj@mgalaw.com
3. Anne Kingsley (Laymember): Anne.kingsley@unlv.edu
4. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
emily@fumolaw.com; pitaro@gmail.com.
5. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

Dated this 28 day of July, 2020.



Kristi Faust, an employee
of the State Bar of Nevada






2020.07.28- Arabia - Notice of Formal Hearing

Final Audit Report

2020-07-28

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1 **MOT**

2 THOMAS F. PITARO, ESQ.
3 Nevada Bar No. 1332
4 Kristine.fumolaw@gmail.com
5 EMILY K. STRAND, ESQ.
6 Nevada Bar No. 15339
7 emily@fumolaw.com
8 PITARO & FUMO, CHTD.
9 601 Las Vegas Boulevard
10 Las Vegas, NV 89101
11 Phone (702) 474-7554
12 Fax (702) 474-4210
13 Attorneys for Respondent



FILED

AUG 05 2020

STATE BAR OF NEVADA
BY: *R. Feli*
OFFICE OF BAR COUNSEL

8 **STATE BAR OF NEVADA**

9 **SOUTHERN NEVADA DISCIPLINARY BOARD**

10 STATE BAR OF NEVADA,

11 Complainant,

12 v.

13 CHRISTOPHER ARABIA, ESQ.,

14 Respondent.

**MOTION TO DISMISS FOR LACK
OF JURISDICTION OR IN THE
ALTERNATIVE MOTION TO
DISQUALIFY STATE BAR OF
NEVADA FOR CONFLICT OF
INTEREST**

(Evidentiary Hearing Requested)

15
16 **COMES NOW**, respondent, District Attorney Christopher Arabia, by and through his
17 attorneys of record, THOMAS F. PITARO, Esq. and EMILY K. STRAND, Esq., of the law firm
18 PITARO & FUMO, CHTD., and hereby moves for an Order Dismissing the Complaint against
19 him for lack of jurisdiction or in the alternative for an Order disqualifying State Bar Counsel.
20 This Motion is based upon the filing and pleadings herein, the attached Memorandum of Points
21 and Authorities, and any oral argument deemed necessary by the Chair.

22 DATED this 5th day of August, 2020.

23 Respectfully submitted,

24 /s/ Thomas F. Pitaro
25 Thomas F. Pitaro, Esq.
26 Nevada Bar No. 1332

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

27 *Attorneys for Respondent*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. MOTION TO DISMISS FOR LACK OF JURISDICTION**

3 Pursuant to Nevada Rule of Civil Procedure 12(b)(1) and the State Bar of Nevada
4 Disciplinary Rule of Procedure 15, a party may assert “lack of subject matter jurisdiction” as a
5 defense in response to a State Bar complaint.

6 Nev. Rev. Stat. §41.032 states that no action may be brought against the state, state
7 agencies, political subdivisions, or any officer or employee of the state, its agencies, or its political
8 subdivisions based upon the exercise or performance of a discretionary function or duty, whether
9 or not the discretion involved is abused. Discretionary acts are defined as those which require the
10 exercise of personal deliberation, decision and judgment. *Wayment v. Holmes*, 112 Nev. 232, 234,
11 912 P.2d 816, 817 (1996).

12 However, NRS 41.032 does not preclude state officials from being disciplined at all. On
13 the contrary, pursuant to NRS §281A.020(2)(a) the State of Nevada Commission on Ethics was
14 created to investigate potential for conflicts of interest for state officials. The Commission is
15 charged with disciplining state officials for violations that arise and occur out of their official
16 duties or within their capacity as state officials. The Commission is made up of eight people
17 appointed by the Governor and the Legislative Commission. The Commission is responsible for
18 interpreting and enforcing the provisions of the Ethics in Government Law set forth in NRS
19 Chapter 281A. *See* Nev. Rev. Stat. §281A.280. That section of the NRS establishes the public
20 policy and standards of conduct necessary to ensure the integrity and impartiality of government,
21 free from conflicts of interest between public duties and private interests of state and local public
22 officers and employees.¹

23 The State Bar of Nevada lacks subject matter jurisdiction over this matter because the
24 actions which gave rise to the ethics complaint arose primarily out of District Attorney Arabia’s
25 discretionary decisions as an elected official, not his private decisions as an attorney. As such, no
26

27 ¹ *See* The State of Nevada Commission on Ethics, *About NCOE*, available at
<http://ethics.nv.gov/About/NCOE/>, last accessed 8/2/2020.

1 action may be brought against District Attorney Arabia pursuant to NRS 41.032. Instead, if there
2 was an alleged conflict of interest, the correct agency to investigate and, if necessary, issue
3 discipline, would be the Nevada Ethics Commission. As such, the Respondent respectfully moves
4 to have the complaint dismissed for lack of subject matter jurisdiction.
5

6 **II. MOTION TO DISQUALIFY STATE BAR OF NEVADA**

7 It has come to the attention of Respondent's Counsel that following District Attorney
8 Arabia's decision to terminate Mr. Vieta-Kabell's employment with the Nye County District
9 Attorney's office on September 18, 2019, Mr. Vieta-Kabell was almost immediately hired by the
10 State Bar of Nevada. *See Exhibit A.* Moreover, it was during the time that he worked for the State
11 Bar that Mr. Vieta-Kabell filed the grievance against District Attorney Arabia that is the basis for
12 the instant complaint. Shockingly, despite knowing that one of their employees was the aggrieved
13 party, the State Bar did not recuse themselves from the case and instead proceeded as if it was
14 any other complaint. Allowing the State Bar of Nevada to continue to represent the interests of
15 the people of Nevada given their conflict of interest is outrageous.

16 Even more troubling and indicative of the State Bar's unfitness to oversee this case, is the
17 fact that in addition to hiring Mr. Vieta-Kabell, the State Bar of Nevada also hired another former
18 Nye County District Attorney who was terminated by District Attorney Arabia during this time
19 period: former Deputy District Attorney Daniel Young. *See Exhibit B.* Not only did the State Bar
20 hire Mr. Young without reaching out to the Nye County District Attorney's office for references
21 or information about his termination, but appallingly, they hired him knowing that he had a
22 pending bar complaint from his time at the DA's office. The State Bar did not recuse themselves
23 from the case or refer it to the Board of Governors as required by Supreme Court Rule 104(3). As
24 a result, and unsurprisingly, the complaint against Mr. Young was promptly dismissed mere
25 weeks after he began working at the State Bar.

26 However, the pattern of the State Bar refusing to recuse themselves from cases where
27 they have conflicts of interest did not end there. In addition to their conflict of interest with Mr.

1 Vieta-Kabell and Mr. Young, the State Bar also dismissed a bar complaint that Mr. Arabia had
2 filed against another former Deputy District Attorney named Ronni Boskovich. Ms. Boskovich
3 was terminated by District Attorney Arabia following an investigation which showed
4 insubordination, serious conflicts of interest, and other concerning behavior by Ms. Boskovich.
5 Due to his duty to report as a member of the Nevada Bar, District Attorney Arabia reported Ms.
6 Boskovich's conduct to the State Bar in August of 2019.

7 Despite ample evidence that Ms. Boskovich worked on marijuana-related cases as a
8 District Attorney while she and/or her family were simultaneously investing in the marijuana
9 industry in Nevada and that she lied about her conduct during a subsequent investigation, the bar
10 complaint was dismissed in June of 2020. At no point during the investigation did the Bar address
11 the fact that Ms. Boskovich had close personal relationships with multiple members of Bar staff,
12 including former Deputy District Attorneys Vieta-Kabell and Young. Alarming, once again, the
13 State Bar did not recuse themselves from overseeing the case, despite the obvious conflict with
14 the respondent and once again, the result was a dismissal of the complaint.

15 Nevada Rule of Professional Conduct 1.7 states that a lawyer shall not represent a client
16 "if the representation involves a concurrent conflict of interest. A concurrent conflict of interest
17 exists if there is a significant risk that the representation of one or more clients will be materially
18 limited by the lawyer's responsibilities to another client, a former client *or third person* or by a
19 *personal interest of the lawyer*." (emphasis added). NRPC 1.10 states that "when lawyers are
20 associated in a firm, none of them shall knowingly represent a client when any one of them
21 practicing alone would be prohibited from doing so by Rules 1.7, 1.9, or 2.2, unless the prohibition
22 is based on a personal interest of the prohibited lawyer and does not present a significant risk of
23 materially limiting the representation of the client by the remaining lawyers in the firm."

24 Here, Mr. Vieta-Kabell and Mr. Young would be prohibited from representing the State
25 Bar of Nevada in their case against District Attorney Arabia based on their personal involvement.
26 Each of them were terminated by District Attorney Arabia and thus have something to gain by
27 seeing him disciplined by the State Bar. Allowing this case to be prosecuted by the State Bar

1 opens the door for vengefulness by former employees as opposed to a nuanced investigation with
2 the goal of protecting of the public.

3 Additionally, in Mr. Vieta-Kabell's specific case, he would be prohibited from
4 representing the Bar based on the fact that he is likely to be called as a witness in the instant case,
5 given that he is the complainant for the grievance and has a past history of disagreements with
6 District Attorney Arabia. The Respondent listed Mr. Vieta-Kabell as a potential witness in their
7 Initial Disclosures which were filed on July 7, 2020.

8 Due to the fact that Mr. Vieta-Kabell and Mr. Young have conflicts which preclude them
9 from taking the instant case, no one else at the State Bar should be allowed to take the case either.
10 There is a significant risk that whichever bar counsel is appointed to this case will be materially
11 limited by their personal relationship with one or more of the attorneys that District Arabia
12 terminated. In short, there are simply too many people at the State Bar who have been involved
13 either personally or professionally with either District Attorney Arabia, Mr. Vieta-Kabell, Mr.
14 Young, or even Ms. Boskovich.

15 Additionally, even if the Bar Counsel assigned to this case did not personally know one
16 of District Attorney Arabia's former deputies, pursuant to NRPC 1.10, the conflict of those former
17 deputies would be imputed to the entire State Bar. This is not the sort of matter where the attorneys
18 could be timely screened from the matter. Even knowing that Mr. Vieta-Kabell and Mr. Young
19 were hired by the same employer as Bar Counsel is likely to prejudice that bar counsel in favor
20 of Mr. Vieta-Kabell. There is a significant risk that bar counsel will give more credence to the
21 claims of Mr. Vieta-Kabell based on the fact that they work for the same employer and that they
22 will be unable to assess the facts of the case in a dispassionate manner.

23 The Nevada Supreme Court has adopted a myriad of rules to ensure the fairness of State
24 Bar Hearings and to avoid the appearance of impropriety that is present in this case. One such
25 rule is SCR 120(2) which allows for the Board of Governors to appoint an ad hoc attorney to
26 serve in Bar Counsel's place whenever Bar Counsel is disqualified from participating in a State
27 Bar investigation such as the present case. As such, given the ongoing entanglement and potential

1 Bar investigation such as the present case. As such, given the ongoing entanglement and potential
2 interference of State Bar employees in the present case the Board of Governor's must appoint an
3 ad hoc attorney to represent the Bar in this matter.
4

5 **III. CONCLUSION**

6 Based on the foregoing, the Respondent hereby respectfully moves for an Order
7 Dismissing the Complaint against him for lack of jurisdiction or in the alternative for an Order
8 disqualifying State Bar Counsel. If the chair is not inclined to grant either motion, the Respondent
9 would request an evidentiary hearing on this matter.

10 DATED this 5th day of August, 2020.

11 Respectfully submitted,

12 /s/ Thomas F. Pitaro
13 Thomas F. Pitaro, Esq.
Nevada Bar No. 1332

12 /s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

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EXHIBIT A

11:13



Michael >

iMessage
Sat, Sep 28, 8:45 AM

Hi judge! I got a job with the state bar yesterday. Thank you for letting me use you as a reference, and I hope we get another chance to work together again or at least catch up in the future!

That's great, Mike! And please call me Lisa.... I'm so happy for you and your family. Brian Kunzi asked me to serve on the committee for functional equivalency, so if that goes through, we may indeed have a chance to work together again. Congrats and go celebrate with your family this weekend!

I will! Yeah I'm in a different division than Brian but I'm really excited to be across the building from him again. We were talking about you yesterday because he saw that I listed you as a reference and he was really happy to hear how you were killing it as JP, but not surprised!

Aww, that's nice of you both. I'm just trying to be a fair and conscientious judge, and I'm glad



iMessage



Apple Pay



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EXHIBIT B

STATE BAR OF NEVADA



3100 W. Charleston Blvd.
Suite 100
Las Vegas, NV 89102
phone 702.382.2200
toll free 800.254.2797
fax 702.385.2878

9456 Double R Blvd., Ste. B
Reno, NV 89521-5977
phone 775.329.4100
fax 775.329.0522

www.nvbar.org

February 5, 2020

Michael Edwards, Esq.
c/o Daniel Young, Esq.
8945 W. Russell Rd., Suite 300
Las Vegas, NV 89148

RE: SBN Case No. OBC19-0845 / Edward L. Fox

Dear Mr. Young:

A Screening Panel of the Southern Nevada Disciplinary Board reviewed the above-referenced grievance file.

The Panel unanimously concluded that formal disciplinary proceedings would not be initiated against you. Therefore, the grievance was dismissed and, as such, this matter is closed.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

Phillip J. Pattee
Assistant Bar Counsel

PJP/sdr

Christopher R. Arabia

From: Michael Edwards <medwards@messner.com>
Sent: Tuesday, January 28, 2020 10:04 AM
To: 'Cynthia McGraw'; Christopher R. Arabia
Cc: Laurie Moreno; dybgpn@gmail.com; Ryan A. Loosvelt
Subject: Edward Fox v. Nye County - Claim No. P243-17-06260-01

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Cynthia and Chris,

I spoke with the Phil Pattee with the Office of Bar Counsel today regarding the grievance filed by Mr. Fox against the Nye County DA Office and DDA Daniel Young. Mr. Pattee stated that they had completed their investigation and were preparing to file paper work to have the grievance dismissed in its entirety next week. Mr. Pattee stated that he would like permission to speak directly with Mr. Young, and I have agreed to allow that access.

The fact that Mr. Young now works at the Office of Bar Counsel indicates that this matter is heading toward favorable resolution. I spoke with Mr. Young today about the request from Mr. Pattee, and Mr. Young is in agreement as well.

I will update you once again as soon as we have received further confirmation that this matter has been dismissed. In the interim, please advise if you have any additional questions or concerns on this matter.

Mike

Michael M. Edwards
Partner

Messner Reeves LLP
8945 W. Russell Road | Suite 300
Las Vegas, NV 89148

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Attorneys for Respondent
7

8 **STATE BAR OF NEVADA**

9 **SOUTHERN NEVADA DISCIPLINARY BOARD**

10 STATE BAR OF NEVADA,

11 Complainant,

12 v.

13 CHRISTOPHER ARABIA, ESQ.,

14 Respondent.

Case No: OBC19-1383

**RESPONDENT'S FINAL
DISCLOSURES**

15 **COMES NOW**, respondent, Nye County District Attorney Christopher Arabia
16 ("Arabia"), by and through his attorneys of record, THOMAS F. PITARO, Esq. and EMILY K.
17 STRAND, Esq., of the law firm PITARO & FUMO, CHTD., and hereby submits the following
18 list of witnesses and documents which may be offered at the time of the hearing on the above-
19 entitled complaint.

20 **A. Documents.**

21 The majority of the documents enclosed with the Complainants disclose were originally
22 provided by the Respondent. Enclosed with the Respondent's Initial disclosures were affidavits
23 from Marla Zlotek and Bradley Richardson which were used in support of the Respondent's
24 Motion for Summary Judgment. At this time, the Respondent has no additional documents to
25 disclose, however if an evidentiary hearing is granted for the Respondent's Motion to Dismiss
26 and/or Disqualify, the Respondent anticipates subpoenaing employment documents for a select
27

1 few State Bar employees which may be admitted at both the evidentiary hearing and possibly the
2 disciplinary hearing as necessary.

3
4 **B. Witnesses.**

- 5 1. Respondent Nye County District Attorney Christopher Arabia, Esq. may testify about
6 his job duties and responsibilities as District Attorney, his supervision of Mr. Vieta-
7 Kabell, the ongoing problems with Mr. Kabell's insubordination, his ultimate decision
8 to terminate Mr. Kabell, and his decision to advise the Nye County Manager not to
9 hold a termination hearing.
- 10 2. Chief Deputy District Attorney Marla Zlotek, Esq. may testify about her job duties
11 and responsibilities as a Deputy District Attorney, her understanding of the
12 employment status of district attorneys, and conversations she participated in
13 regarding Mr. Kabell's insubordination and ultimate termination.
- 14 3. Deputy District Attorney Bradley Richardson, Esq. may testify about his job duties
15 and responsibilities as a Deputy District Attorney, his understanding of the
16 employment status of district attorneys, and conversations he participated in regarding
17 Mr. Kabell's insubordination and ultimate termination. His email is
18 brichardson@co.nye.nv.us
- 19 4. Nye County Human Resources Director Danelle Shamrell may testify about her job
20 duties and responsibilities as Nye County Human Resources Director, her
21 understanding of the employment status of district attorneys, and conversations she
22 participated in with regard to Mr. Kabell's termination and the denial of his request
23 for a hearing. Her telephone number is 775-482-7242 and her email is
24 dshamrell@co.nye.nv.us
- 25 5. Nye County Manager Timothy Sutton may testify about his job duties and
26 responsibilities as Nye County Manager, his understanding of the employment status
27 of district attorneys, and conversations he participated in regarding Mr. Kabell's

1 termination and the denial of his request for a hearing. His telephone number is 775-
2 751-075 and his email is nyeadmin@co.nye.nv.us

3 6. Former Deputy District Attorney Michael Vieta-Kabell may testify about his job
4 duties and responsibilities as Nye County Manager, his understanding of the
5 employment status of district attorneys, and conversations he participated in regarding
6 his termination and the denial of his request for a hearing.

7 7. A Custodian of Records for the State Bar of Nevada may testify about documents
8 provided to the Respondent regarding former Nye County Deputy District Attorneys
9 who were involved in State Bar matters.

10 Further, the Respondent reserves the right to supplement this disclosure.

11 DATED this 5th day of August, 2020.

12
13 /s/ Thomas F. Pitaro
14 Thomas F. Pitaro, Esq.
15 Nevada Bar No. 1332

16
17 /s/ Emily K. Strand
18 Emily K. Strand, Esq.
19 Nevada Bar No. 15339
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Case No: OBC19-1383



STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)	
)	
Complainant,)	<u>OPPOSITION TO RESPONDENT'S</u>
vs.)	<u>MOTION TO DISMISS COMPLAINT</u>
)	<u>OR IN THE ALTERNATIVE MOTIN</u>
CHRISTOPHER ARABIA, ESQ.,)	<u>TO DISQUALIFY STATE BAR OF</u>
BAR NO. 9749)	<u>NEVADA FOR CONFLICT OF</u>
)	<u>INTEREST</u>
Respondent.)	

The State Bar of Nevada, by and through Assistant Bar Counsel R. Kait Flocchini, hereby responds to Respondent's Motion to Dismiss Complaint and requests that the motion be denied.

This Opposition is based on the following Memorandum of Points and Authorities, the pleadings in this matter, and any oral argument requested by the Board Chair.

MEMORANDUM OF POINTS AND AUTHORITIES

This second Motion to Dismiss argues, again, that Respondent cannot be disciplined because he is an elected official and NRS 281A.010, *et seq.* provides for the imposition of sanctions by a Commission on Ethics for all elected officials. However, the Commission on

1 Ethics does not have exclusive jurisdiction on all alleged misconduct by an attorney, who is an
2 elected official. It is appropriate to deny this Motion to Dismiss.

3 Respondent also argues that the State Bar must be disqualified from prosecuting this
4 disciplinary matter because (i) the grievant *was* briefly employed by the State Bar and (ii)
5 another of Respondent's former employees is employed by the State Bar. Respondent's
6 reliance on Rule of Professional Conduct ("RPC") 1.10 (Imputation of Conflicts of Interest) is
7 misplaced. First, RPC 1.10 does not apply to governmental agencies. Second, RPC 1.10 does
8 impute conflicts of a personal nature to others in the same firm. Neither does the appropriate
9 rule, RPC 1.11. Respondent has already acknowledged that he alleges a personal animus by a
10 former deputy—not a conflict of loyalty or confidentiality. Thus, it is appropriate for a non-
11 interested attorney from the Reno office to prosecute the matter.

12 **Disciplinary Board's Jurisdiction.**

13 Rule 99 of the Nevada Supreme Court Rules ("SCR") provides that

14 [e]very attorney admitted to practice law in Nevada, specially admitted by a
15 court of this state for a particular proceeding, practicing law here, whether
16 specially admitted or not, or whose advertising for legal services regularly
17 appears in Nevada is subject to the exclusive disciplinary jurisdiction of the
supreme court and the disciplinary boards and hearing panels created by these
rules.

18 Respondent argues that NRS 281A.010 *et seq.* prohibits this Panel, and ultimately the
19 Nevada Supreme Court, from exercising the jurisdiction granted in SCR 99. NRS 281A.080
20 states:

21 1. Except as otherwise provided in this section, the Commission has
22 jurisdiction to investigate and take appropriate action regarding an alleged
23 violation of this chapter by a public officer or employee or former public officer
24 or employee in any proceeding commenced by an ethics complaint, which is filed
with the Commission or initiated by the Commission on its own motion, within
2 years after the alleged violation or reasonable discovery of the alleged
violation.

25 2. The Commission does not have jurisdiction regarding alleged conduct by
a public officer or employee or former public officer or employee for which:

1 (a) A complaint may be filed or, if the applicable limitations period has
2 expired, could have been filed with the United States Equal Employment
3 Opportunity Commission or the Nevada Equal Rights Commission; or

4 (b) A complaint or employment-related grievance may be filed or, if the
5 applicable limitations period has expired, could have been filed with another
6 appropriate agency with jurisdiction to redress alleged discrimination or
7 harassment, including, without limitation, a state or local employee-
8 management relations board or similar state or local agency, but any bar on the
9 Commission's jurisdiction imposed by this subsection applies only to the extent
10 that it pertains to the alleged discrimination or harassment, and this subsection
11 does not deprive the Commission of jurisdiction regarding the alleged conduct
12 if such conduct is sanctionable separately or concurrently under the provisions
13 of this chapter, irrespective of the alleged discrimination or harassment.

14 In contrast to SCR 99, NRS 281A.080 does not assert exclusive jurisdiction over
15 individuals that are public officers or employees. In fact, NRS 281A.080 specifically limits the
16 Commission's jurisdiction to an "alleged violation of this chapter." The State Bar is not alleging
17 a violation of NRS 281A.080.

18 Respondent is an attorney admitted to practice law in Nevada. Therefore, the Nevada
19 Supreme Court, and this Disciplinary Board, have jurisdiction to hear allegations that
20 Respondent violated ***the Rules of Professional Conduct***. Although the Commission on
21 Ethics *may* also seek to "investigate and take proper action regarding an alleged violation of
22 this chapter [NRS 281A.080] by" Respondent, such investigation and/or action does not strip
23 the Nevada Supreme Court and disciplinary boards of their jurisdiction.

24 For this reason, Respondent's Motion to Dismiss fails to establish that there is a lack of
25 subject matter jurisdiction and should be denied.

There is No Basis to Disqualify the State Bar of Nevada.

State bar counsel is tasked with investigating all matters involving possible attorney
misconduct and prosecuting such matters before all forums in the name of the State Bar of
Nevada. *See* SCR 104. Thus, bar counsel is a government agency for purposes of reviewing

1 conflicts of interest. In addition, Michael Vieta-Kabell, Daniel Young, and Gerard Giosoco¹ are
2 former government employees because each was a Nye County Deputy District Attorney.

3 RPC 1.11 (Special Conflicts of Interest for Former and Current Government Officers and
4 Employees) provides that a lawyer who has formerly served as a public officer or employee of
5 the government is required to refrain from revealing, or using to the disadvantage of the former
6 client, information relating to prior representations, except as these Rules would permit or
7 require with respect to a client. The lawyer is also prohibited from representing a client in
8 connection with a matter in which the lawyer participated personally and substantially as a
9 public officer or employee, unless informed consent is given for the representation.

10 RPC 1.11 also provides:

11 (b) When a lawyer is disqualified from representation under paragraph (a), no
12 lawyer in a firm with which that lawyer is associated may knowingly undertake
or continue representation in such a matter unless:

13 (1) The disqualified lawyer is timely screened from any participation in
14 the matter and is apportioned no part of the fee therefrom; and

15 (2) Written notice is promptly given to the appropriate government
agency to enable it to ascertain compliance with the provisions of this Rule.

16 Mr. Giosoco was not employed by Nye County on or about September 23, 2019 and
17 September 24, 2019. Thus, he could not have personally or substantially participated in
18 Respondent's communications regarding whether Nye County should conduct a hearing
19 pursuant to Mr. Vieta-Kabell's request. Without the participation, there is no need to further
20
21
22

23 ¹ Gerard Giosoco, Esq. was hired as an Assistant Bar Counsel on or about January 6, 2020. Mr.
24 Giosoco was employed as a Nye County Deputy District Attorney prior to his employment with
25 the State Bar. Thus, although Respondent has not identified Mr. Giosoco in the Motion to
Disqualify, he should be included in any analysis of potential conflicts of interest raised by an
Assistant Bar Counsel's prior employment by Nye County.

1 apply RPC 1.11 to Mr. Giosoco.² Nonetheless in an abundance of caution, he has been screened
2 from this matter.

3 Respondent has not alleged that Mr. Young personally or substantially participated in
4 his communications regarding whether Nye County should conduct a hearing pursuant to Mr.
5 Vieta-Kabell's request. Thus, there is no evidence that Mr. Young could not have participated
6 in this matter. Regardless, and again in an abundance of caution, Mr. Young has been screened
7 from this matter.

8 Finally, Mr. Vieta-Kabell's participation in the underlying matter- via his request for a
9 hearing regarding his termination by Respondent and Respondent's advice to the Nye County
10 Human Resources Director- was specifically not while he was a public officer or employee.
11 Again though, Mr. Vieta-Kabell was screened from the investigation of the grievance during
12 the brief time that he was employed at the State Bar. Further, Mr. Vieta-Kabell was employed
13 by the State Bar from October 7, 2019, to November 22, 2019. This means, Mr. Vieta-Kabell
14 was not employed by the State Bar when Respondent submitted his initial response to the
15 grievance on December 19, 2019, when the matter was presented to a Screening Panel on
16 March 10, 2020, or when the disciplinary Complaint was filed on April 6, 2020.

17 There is no conflict, under RPC 1.11, which would disqualify the Office of Bar Counsel,
18 specifically via Assistant Bar Counsel R. Kait Flocchini, from representing the State Bar in this
19 matter.

20 RPC 1.10 (Imputation of Conflicts of Interest) does not apply to the State Bar because
21 RPC 1.11 specifically addresses conflicts of interest for attorneys at the Office of Bar Counsel.
22 Regardless, if RPC 1.10 were applied, it would not impute any alleged conflict to Assistant Bar
23 Counsel R. Kait Flocchini which could prevent representation of the State Bar in this matter.

25 ² This lack of participation also precludes application of RPC 1.9(d).

1 Neither RPC 1.10, as cited by Respondent, nor RPC 1.11 preclude her from representing the
2 State Bar in this matter.

3 RPC 1.10 states, pertinent part:

4 (a) While lawyers are associated in a firm, none of them shall knowingly
5 represent a client when any one of them practicing alone would be prohibited
6 from doing so by Rules 1.7, 1.9, or 2.2, unless the prohibition is based on a
7 personal interest of the prohibited lawyer and does not present a significant risk
8 of materially limiting the representation of the client by the remaining lawyers
9 in the firm.

8 It appears that Respondent's alleged concern is that Mr. Vieta-Kabell and/or Mr. Young
9 would have a personal interest that would materially limit their responsibilities to the State
10 Bar.³ This exact concern is addresses in the exception set forth in RPC 1.10. Prohibitions of
11 one lawyer, due to a personal interest, are explicitly not imputed to the rest of the firm. Thus,
12 application of RPC 1.10 does not prohibit Assistant Bar Counsel R. Kait Flocchini from
13 representing the State Bar in this matter.

14 Respondent appears to allege that Assistant Bar Counsel R. Kait Flocchini would have a
15 personal interest in advancing another Assistant Bar Counsel's personal vengefulness. *See*
16 Motion at 4:24-5:2. Respondent's argument fails to acknowledge that the Office of Bar
17 Counsel, and all lawyers therein, are bound by RPC 3.1 (Meritorious Claim and Contentions).
18 Further, a Screening Panel initially determined that Respondent engaged in misconduct when
19 he demanded the Nye County Human Resources Director cancel a hearing, and the disciplinary
20 Complaint in this matter has survived one Motion to Dismiss and a Motion for Summary
21 Judgment already. Finally, Mr. Vieta-Kabell is no longer an employee of the State Bar (and
22 was screened) and Mr. Young and Mr. Giosoco have been screened from the matter for its
23 entirety, thus there is no personal vengefulness that could have been conveyed to Ms. Flocchini.

24
25 ³ The State Bar specifically does not respond to Respondent's litany of unrelated grievances is
not addressed herein because they are not at issue in this matter.

1 **Conclusion**

2 SCR 99 establishes exclusive jurisdiction over disciplinary matters regarding attorneys.
3 Based on the foregoing, the State Bar requests that Respondent's second Motion to Dismiss be
4 denied.

5 RPC 1.11 (Special Conflicts of Interest for Former and Current Government Officers and
6 Employees), or RPC 1.10 (Imputation of Conflicts of Interest) do not warrant disqualification
7 of Assistant Bar Counsel R. Kait Flocchini in this matter. Based on the foregoing, the State Bar
8 requests that Respondent's Motion to Disqualify State Bar of Nevada for Conflict of Interest be
9 denied.

10 Dated this 19th day of August, 2020.

11 STATE BAR OF NEVADA
12 DANIEL M. HOOGE, Bar Counsel

13 

14 By: _____

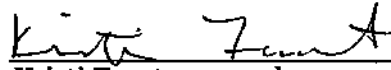
15 R. Kait Flocchini, Assistant Bar Counsel
16 Nevada Bar No. 9861
17 3100 W. Charleston Blvd, Suite 100
18 Las Vegas, Nevada 89102
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21
22
23
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25

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies a true and correct copy of the foregoing
3 **OPPOSITION TO RESPONDENT'S MOTION TO DISMISS COMPLAINT OR**
4 **IN THE ALTERNATIVE MOTIN TO DISQUALIFY STATE BAR OF NEVADA**
5 **FOR CONFLICT OF INTEREST** was served via email to:

- 6 1. Russ Marsh, Esq. (Board Chair): russ@wmllawlv.com ;
7 remarsh2000@hotmail.com
8 2. Marc Cook, Esq. (Panel Chair): mcook@bckltd.com
9 3. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
10 emily@fumolaw.com.
11 4. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

12 Dated this 1st day of August, 2020.

13 
14 Kristi Faust, an employee
15 of the State Bar of Nevada
16
17
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Case No: OBC19-0438



STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
 Complainant,)
 vs.)
)
 CHRISTOPHER ARABIA, ESQ.,)
 BAR NO. 9749)
)
 Respondent.)

STATE BAR'S HEARING BRIEF

INTRODUCTION

Respondent fired Michael Vieta-Kabell from being a Nye County Deputy District Attorney. The State Bar's Complaint in this disciplinary matter does NOT allege that such conduct violated any Rules of Professional Conduct. This hearing is NOT about whether Respondent could, or should, have terminated Vieta-Kabell's employment at Nye County. This disciplinary matter is about what happened AFTER the termination. It is a finite issue:

Did Christopher Arabia, Esq. ("Respondent") violate the Nevada Rules of Professional Conduct ("RPC") when he, as the Nye County District Attorney told the Nye County Human Resources Director to "cease and desist" with a requested hearing regarding his termination of a Deputy District Attorney and demanded it be vacated?

1 If the Panel finds a violation, this Panel will then be asked to consider (i)
2 Respondent's mental state when he engaged in the conduct and (ii) the injury, or potential
3 injury, to the client, the public, the integrity of the legal professional, and/or the legal system
4 because of Respondent's conduct.

5 **SUMMARY OF FACTS**

6 The uncontested evidence is Respondent received a notice from the Nye County
7 Human Resources Director stating that an appeal hearing regarding Respondent's
8 termination of former Deputy District Attorney Michael Vieta-Kabell was set for October 9,
9 2019. *See* Hearing Exhibit 4. It is also undisputed that as a result, Respondent emailed the
10 Nye County Human Resources Director and the Nye County Manager, but not Vieta-Kabell,
11 defending his termination decision and stating :

12 It is my legal opinion as the Nye County District Attorney that you
13 must cease and desist from conducting the proposed meeting.

14 Please confirm via e-mail no later than 4:00 p.m. on Thursday,
15 September 26, 2019, that you have vacated the proposed hearing regarding
16 Mr. Vieta-Kabell.

17 *See* Hearing Exhibit 5. As a direct consequence of Respondent's demand, the Nye County
18 Human Resources Director cancelled the appeal hearing. *See* Hearing Exhibit 7.

19 Respondent has argued that (i) Rebecca Bruch, Esq., advised the Nye County Human
20 Resources Director to cancel the hearing and (ii) that he was not acting as an advisor to Nye
21 County when he made the demand. *See* Hearing Exhibit 8. But Respondent's own email
22 and the Nye County Human Resources Director's email belies his argument. The State Bar
23 anticipates that Ms. Bruch and the Nye County Human Resources Director will confirm that
24 they did not discuss the cancellation prior to it happening on September 25, 2019.

25 Respondent used his position as advisor to Nye County officials to advance his own
personal interest in blocking the review of his decision that resulted in the request for an

1 appeal hearing. The State Bar will submit to the Panel at the Formal hearing that this is a
2 violation of RPC 1.7 (Conflict of Interest: Current Clients) and RPC 8.4(d) (Misconduct-
3 prejudicial to the administration of justice) that warrants imposition of a sanction.

4 **Appropriate Sanctions for a Violation of RPC 1.7 and/or RPC 8.4(d).**

5 The Nevada Supreme Court has directed that four factors, as identified in The
6 Annotated Standards for Imposing Lawyer Sanctions, (the “Standards”) are relevant to
7 determining what sanctions are appropriate for particular misconduct. *See Lerner, supra*,
8 at 1246. Those four factors are (i) the duty violated, (ii) the lawyer’s mental state, (iii) the
9 potential or actual injury caused by the lawyer’s misconduct and (iv) the existence of
10 aggravating or mitigating circumstances. *See id.*

11 An attorney may violate a duty to client, the public, the profession and/or the legal
12 system. *See The Annotated Standards for Imposing Lawyer Sanctions, Section 3.0 (pg. 117).*

13 The Standards provide that an attorney’s mental state can be categorized as
14 intentional, knowing, or negligent. *See id.* at 120. “Intentional” is defined as acting “with a
15 conscious objective of purpose to accomplish a particular result.” *See id.* at 121. “Knowing”
16 is defined as acting “with conscious awareness of the nature or attendant circumstances of
17 the conduct, but without the conscious objective or purpose to accomplish a particular
18 result.” *See id.* at 122 (citations omitted). Finally, “negligent” is defined as when “a lawyer
19 lacks awareness of a substantial risk that circumstances exist or that a result will follow,
20 which failure is a deviation from the standard of care that a reasonable lawyer would exercise
21 in the situation.” *See id.* at 124 (citations omitted). Mental state is distinguished from
22 motivation, which is evaluated as an aggravating or mitigating factor. *See id.*

23 The Standards also discuss that an injury may be actual or potential and that injury
24 can be inflicted on the client or others, the public, the legal system, or the profession. *See*
25 *id.* at 126-127.

Standards 4.31 through 4.34 in the Standards address the appropriate sanction for failing to recognize and/or disclose a conflict of interest to a current client. *See* Standards 4.31-4.34 attached hereto as **Exhibit A**. Standards 6.31 through 6.34 in the Standards address the appropriate sanction for attempting to influence an official by means prohibited by law. *See* Standards 6.21-6.24 attached hereto as **Exhibit B**. The different sections address when the sanction of disbarment, suspension, reprimand, and admonition are warranted.

Standard 4.32 states that “suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client that possible effect of that conflict, and causes injury or potential injury to a client.” This Standard highlights that “a lawyer need not necessarily be aware that his or her conduct violates a disciplinary rules, as long as he or she knows the essential facts giving rise to a violation.” *See* The Annotated Standards for Imposing Lawyer Sanctions, Section 4.32, pg. 170. Application of this Standard would recognize that Respondent, as District Attorney, must understand the conflict inherent in advising Nye County regarding a matter in which he is an adversarial party.

Standard 4.33 states that “reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer’s own interests . . . and causes injury or potential injury to a client.” Application of this Standard would recognize that Respondent failed to acknowledge that he had a personal interest in defending his personnel decision and should not be advising Nye County on how to handle a request to review that decision.¹

¹ In Nevada, a reprimand can be a Public Reprimand, or the lesser sanction of a Letter of Reprimand. *See* SCR 102.

1 Standard 6.22 states that “suspension is generally appropriate when a lawyer engages
2 in communication with an individual in the legal system when the lawyer knows that such
3 communication is improper, and causes injury or potential injury to a party or causes
4 interference or potential interference with the outcome of a legal proceeding.” In *in re*
5 *Ruffin* 54 So.3d 645 (La. 2011) an Assistant District Attorney was suspended because she
6 used her government position to threaten a third-party in a friend’s collection dispute that
7 a failure to pay the debt would result in criminal prosecution. Application of this Standard
8 would recognize that Respondent used his position as District Attorney to obtain a result
9 from the Nye County Human Resources Director in a matter in which he may have been a
10 party without notice to the opposing party.

11 Standard 6.23 provides “reprimand is generally appropriate when a lawyer is
12 negligent in determining whether it is proper to engage in communication with an individual
13 in the legal system, and cause injury or potential injury to a party or interference or potential
14 interference with the outcome of the legal proceeding.” Application of this Standard would
15 recognize that, in the best light possible, Respondent failed to acknowledge the impropriety
16 of his unilateral communication with the Nye County officials, with the intent to interfere
17 with whether Vieta-Kabell received a hearing.

18 ///

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24 ///

1 The Panel must decide what sanction, if any, is the appropriate to Respondent's
2 conduct. The State Bar submits that, depending on the mental state of Respondent, the
3 undisputed facts support a sanction of no less than a Letter of Reprimand and no more than
4 a suspension.

5 DATED this 21st day of August, 2020.

6 STATE BAR OF NEVADA
7 DANIEL M. HOOGE, BAR COUNSEL

8 
9

10 R. Kait Flocchini
11 Assistant Bar Counsel
3100 W. Charleston Blvd, Suite 100
Las Vegas, Nevada 89102

Exhibit A

Exhibit A

4.3 FAILURE TO AVOID CONFLICTS OF INTEREST

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conflicts of interest:

4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):

- (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client, or
- (b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
- (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

4.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

4.34 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

Exhibit B

Exhibit B

6.2 ABUSE OF THE LEGAL PROCESS

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

Case Nos.: OBC19-1383



FILED

AUG 24 2020

STATE BAR OF NEVADA
BY: *B. Felix*
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
)
vs.)
)
CHRISTOPHER ARABIA, ESQ.,)
BAR NO. 9749)
)
Respondent.)

ORDER AFTER
PRE-HEARING CONFERENCE

Pursuant to Rule 23 of the Disciplinary Rules of Procedure, the Hearing Panel Chair Marc Cook, Esq., met via telephonic conference with R. Kait Flocchini, Esq., Assistant Bar Counsel, on behalf of the State Bar of Nevada, and Thomas Pitaro, Esq., and Emily Strand, Esq. on behalf of Respondent Christopher Arabia, Esq. ("Respondent"), on August 10, 2020 at 10:00 a.m. and to conduct the Pre-hearing Conference in this matter. Proffered hearing exhibits, Respondent's Motion to Dismiss and to Disqualify, and logistics of the hearing were addressed.

///

///

1 DETAILS OF PRE-HEARING CONFERENCE

2 Respondent's Motions shall be fully briefed and addressed in due court.


3 Based on the parties oral representations made during the Pre-hearing conference,
4 the following is decided:

5 1. The State Bar's exhibits 1-9 are admitted without objection and may be
6 distributed to the Panel prior to the hearing.

7 Good cause appearing, IT IS SO ORDERED.

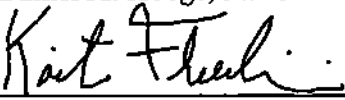
8 Dated this 24 day of August, 2020.

9 SOUTHERN NEVADA DISCIPLINARY BOARD

10
11 By: 
Marc Cook (Aug 24, 2020 08:44 PDT)
12 Marc Cook, Esq.
Hearing Panel Chair

13 Submitted By:

14 STATE BAR OF NEVADA
Daniel M. Hooge, Bar Counsel

15 By: 
16 Kait Flocchini, Assistant Bar Counsel
3100 W. Charleston Boulevard, Suite 100
17 Las Vegas, Nevada 89102
(702) 382-2200
18 Attorney for State Bar of Nevada






Proposed Order After Pre-hearing Conference (SBN v. Arabia)

Final Audit Report

2020-08-24

Created:	2020-08-22
By:	Kait Flocchini (Kaitf@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAomr-27xDHpmBkyvzaAFZWC4BC1yp4mu

"Proposed Order After Pre-hearing Conference (SBN v. Arabia)" History

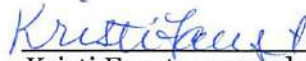
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-  Signed document emailed to Kait Flocchini (Kaitf@nvbar.org), pitaro@lvlaw.vegas, Thomas Pitaro (pitaro@gmail.com), Marc Cook (mcook@bckltd.com), and 1 more
2020-08-24 - 3:44:31 PM GMT

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies a true and correct copy of the foregoing
3 **ORDER AFTER PRE-HEARING CONFERENCE** was served via email to:

- 4 1. Marc Cook, Esq. (Panel Chair): mcook@bckltd.com; SLopan@bckltd.com
5 2. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
6 emily@fumolaw.com; pitaro@gmail.com.
7 3. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

8 Dated this 24 day of August, 2020.

9 
10 Kristi Faust, an employee
11 of the State Bar of Nevada
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1 Case No: OBC 19-1383



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5 **STATE BAR OF NEVADA**
6 **SOUTHERN NEVADA DISCIPLINARY BOARD**

7
8 STATE BAR OF NEVADA,

9 Complainant,

10 vs.

11 CHRISTOPHER ARABIA, ESQ.,
12 BAR NO. 9749

13 Respondent.

ORDER

14 This matter is before the Vice Chair of the Southern Nevada Disciplinary Panel on
15 Respondent's Motion to Dismiss for Lack of Jurisdiction or in the Alternative Motion to
16 Disqualify State Bar of Nevada for Conflict of Interest. The Vice Chair has reviewed that
17 Motion and the supporting declarations and other exhibits, and also has reviewed the State Bar
18 of Nevada's Opposition to Respondent's Motion to Dismiss Complaint or in the Alternative
19 Motin [sic] to Disqualify State Bar of Nevada for Conflict of Interest. The Vice Chair has also
20 reviewed the Complaint in the instant matter, the previously filed Motion to Dismiss (filed April
21 24, 2020), Opposition to Respondent's Motion to Dismiss Complaint (filed May 7, 2020), the
22 Order (filed May 14, 2020), Respondent's Motion for Summary Judgment (filed June 5, 2020),
23 State Bar of Nevada's Opposition to Respondent's Motion for Summary Judgment (filed June
24 23, 2020), Brief in Support of Respondent's Motion for Summary Judgment (filed July 20,
25 2020), and Supplemental Brief in Opposition to Respondent's Motion for Summary Judgment
26 (filed July 20, 2020).

1 Respondent, Christopher Arabia, has filed a motion to dismiss, asking for dismissal of
2 the Complaint for lack of jurisdiction, arguing that the State Bar of Nevada does not have
3 jurisdiction over the subject grievance because Respondent is an elected official against whom
4 an action may not be brought under NRS § 41.032 when such action is based upon the exercise
5 or performance of a discretionary function or duty. Respondent further asserts the State of
6 Nevada Commission on Ethics should be the entity to investigate state officials for any alleged
7 violations that occur out of their official duties or within their capacity as state officials. In the
8 alternative, Respondent seeks disqualification of the State Bar of Nevada for an alleged conflict
9 of interest in prosecuting the instant matter. For the reasons set forth below, this motion is
10 denied in its entirety.

11 Under Rule 15 of the Disciplinary Rules of Procedure, the respondent may file a motion:
12 to dismiss all or part of the Complaint or a motion for more definite statement.
13 **Such motion must be filed and served within twenty (20) calendar days**
14 **of service of the formal Complaint and assert all available basis for**
15 **dismissal of the allegations in the Complaint, such as those listed in NRCP**
16 **12(b). A failure to assert all available basis in one motion shall be deemed**
17 **a waiver of any unasserted defenses, absent good cause shown for the**
18 **failure.**

19 See State Bar of Nevada Disciplinary Rule of Procedure 15 (*emphasis added*).

20 All motions under Rule 15 are to be decided by the Chair or Vice Chair of the
21 Disciplinary Board. Despite the motion to dismiss for lack of jurisdiction being untimely, the
22 Vice Chair finds that it is appropriate to consider all supporting materials submitted by the
23 parties, but finds that no evidentiary hearing is necessary.

24 **A. Lack of Jurisdiction**

25 The Complaint alleges violations of Rule 1.7 (Conflict of Interest: Current Clients) and
26 8.4 (Misconduct) of the Nevada Rules of Professional Conduct. Respondent argues that the

1 State Bar lacks jurisdiction in this case under Nev. Rev. Stat. § 41.032 as supported by *Wayment*
2 *v. Holmes*, 112 Nev. 232, 234, 912 P.2d 816, 817 (1996). See Motion at 2.

3 The ruling in *Wayment* was based upon a lawsuit against the Washoe County District
4 Attorney's office for tortious discharge, not a grievance filed alleging violations of the Nevada
5 Rules of Professional Conduct. "We conclude that the Washoe County District Attorney's
6 office is not a suable entity because it is a department of Washoe County, not a political
7 subdivision. 'In the absence of statutory authorization, a department of the municipal
8 government may not, in the departmental name, sue or be sued.'" *Wayment v. Holmes*, 912
9 P.2d 816, 819. The court in *Wayment* made it clear that its ruling was regarding whether the
10 office could be sued. Here, Respondent is not being sued, so *Wayment* does not apply.

11 Respondent is the District Attorney in Nye County, and as such, he is both a practicing
12 attorney and an elected official. Respondent argues that the instant Complaint would be
13 rightfully brought in front of the State of Nevada Commission on Ethics rather than the State
14 Bar of Nevada. However, jurisdiction is not exclusive. While such a complaint would not be
15 improper in front of the State of Nevada Commission on Ethics, jurisdiction is likewise proper
16 in front of the instant hearing panel, and thereafter for consideration of the panel's
17 recommendations in front of the Supreme Court of Nevada.

18 The State Bar of Nevada points to Rule 99 of the Nevada Supreme Court Rules ("SCR")
19 which provides that attorneys are subject to the jurisdiction of the Supreme Court of Nevada
20 when it comes to alleged violations of the Nevada Rules of Professional Conduct.

21 Every attorney admitted to practice law in Nevada, specially admitted by a
22 court of this state for a particular proceeding, practicing law here, whether
23 specially admitted or not, or whose advertising for legal services regularly
24 appears in Nevada is subject to the exclusive disciplinary jurisdiction of the
supreme court and the disciplinary boards and hearing panels created by these
rules.

25 See SCR 99(1).
26

1 Based upon a plain reading of the rule, all attorneys are subject to the disciplinary
2 jurisdiction of the Supreme Court of Nevada. The rule violations alleged in the Complaint are
3 violations of the Nevada Rules of Professional Conduct, and as such, apply to all practicing
4 attorneys. While the Nevada Commission on Ethics may similarly have an interest in the
5 conduct as alleged, the Supreme Court of Nevada has jurisdiction.

6 **B. Disqualification of the State Bar of Nevada for Conflict of Interest**

7 Respondent asserts the State Bar of Nevada should be disqualified as a result of a
8 conflict of interest. Motion at 3-6. Grievant was employed by the State Bar of Nevada at the
9 time he filed his grievance against Respondent. *See id.* While Grievant was employed by the
10 State Bar of Nevada at the time he filed the grievance giving rise to the instant Complaint,
11 Grievant was not employed by the State Bar of Nevada at the time any proceedings transpired.
12 *See* Opposition at 5. Grievant's employment with the State Bar of Nevada ended on November
13 22, 2019. *See id.* Respondent's initial response was not submitted until December 19, 2019,
14 and all subsequent proceedings occurred thereafter. As a result, Grievant could not have
15 participated as an attorney with the State Bar of Nevada in the subsequent investigation,
16 prescreening, or prehearing matters outside of his role as the Grievant. Further, as a licensed
17 attorney in Nevada, Grievant has a duty to report misconduct, regardless of his place of
18 employment. "A lawyer who knows that another lawyer has committed a violation of the Rules
19 of Professional Conduct that raises a substantial question as to that lawyer's honesty,
20 trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional
21 authority." *See* RPC 8.3(a). There is no exception to the aforementioned rule for employees
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1 of the State Bar of Nevada. As a result, the State Bar of Nevada is not disqualified for conflict
2 of interest with respect to Grievant.

3 Respondent further argues an additional conflict of interest exists for the State Bar of
4 Nevada based upon its employment of Daniel Young, Esq. See Motion at 3. Mr. Young was
5 previously employed by the Nye County District Attorney's office, was terminated therefrom,
6 and was subsequently hired by the State Bar of Nevada. "[A] lawyer who has formerly served
7 as a public officer or employee of the government... Shall not otherwise represent a client in
8 connection with a matter in which the lawyer participated personally and substantially as a
9 public officer or employee, unless the appropriate government agency gives its informed
10 consent, confirmed in writing, to the representation." See RPC 1.11. No allegations have been
11 made that Mr. Young had a substantial role or any personal participation in Respondent's
12 communications with the Nye County Manager giving rise to the subject Complaint. Further,
13 the State Bar of Nevada has screened Mr. Young from the instant matter. See Opposition at 5.
14

15 The State Bar of Nevada further acknowledges that Gerard Giosoco, Esq. is also under
16 its employ and was previously employed by the Nye County District Attorney's office. See
17 Opposition at 4. There has been no allegation that Mr. Giosoco's employment therewith creates
18 an additional conflict, nor that Mr. Giosoco was involved in Respondent's relevant
19 communications with the Nye County Manager, however, the State Bar of Nevada has screened
20 him off the instant matter as well. See *id.*
21

22 In addition to screening prior employees of the Nye County District Attorney's office,
23 the State Bar of Nevada assigned the instant matter to an attorney in its northern office, Assistant
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1 Bar Counsel, R. Kait Flocchini, Esq. It appears this was done out of an abundance of caution
2 on the part of the State Bar of Nevada.

3 Aside from Grievant's employment with the State Bar of Nevada, it does not appear that
4 there is any allegation that he had any involvement with the instant matter aside from filing the
5 instant grievance. Further, Grievant had been terminated from the Nye County District
6 Attorney's office prior to the conduct giving rise to the Complaint. As a result, the Vice Chair
7 does not find that the State Bar of Nevada needs to be disqualified based upon the alleged
8 conflict of interest with Grievant.
9

10 With respect to Mr. Young and Mr. Giosoco, the State Bar of Nevada screened both due
11 to their prior employment with the Nye County District Attorney's office. Respondent has
12 made no allegations that either were substantially involved in his communications with the Nye
13 County Manager, nor that either had any involvement in prosecuting the subject disciplinary
14 matter. Further, the State Bar of Nevada assigned the instant matter to its northern office, where
15 neither Mr. Young or Mr. Giosoco are assigned. The Vice Chair finds that the State Bar of
16 Nevada sufficiently screened both attorneys so as to avoid disqualification.
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1 Respondent's Motion to Dismiss for Lack of Jurisdiction or in the Alternative Motion
2 to Disqualify State Bar of Nevada for Conflict of Interest is Denied.

3 IT IS SO ORDERED.

4 Dated this 27th day of August, 2020.

5
6 SOUTHERN NEVADA DISCIPLINARY BOARD

7
8 *Dana P. Oswalt*
9 By: Dana P. Oswalt (Aug 28, 2020 09:56 PDT)
10 Dana P. Oswalt, Esq.
11 VICE CHAIR
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Arabia Order_

Final Audit Report

2020-08-28

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By:	Kristi Faust (kristif@nvbar.org)
Status:	Signed
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"Arabia Order_" History

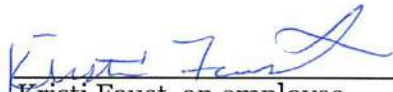
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2020-08-28 - 4:56:57 PM GMT

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies a true and correct copy of the foregoing **ORDER**
3 was served via email to:

- 4 1. Dana Oswalt, Esq. (Disciplinary Board Vice-President):
5 dana@bensonbingham.com
6 2. Marc Cook, Esq. (Panel Chair): mcook@bckltd.com; SLopan@bckltd.com
7 3. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
8 emily@fumolaw.com; pitaro@gmail.com .
9 4. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

10 Dated this 28 day of August, 2020.

11 
12 Kristi Faust, an employee
13 of the State Bar of Nevada
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1 THOMAS F. PITARO, ESQ.
Nevada Bar No. 1332
2 Kristine.fumolaw@gmail.com
EMILY K. STRAND, ESQ.
3 Nevada Bar No. 15339
emily@fumolaw.com
4 PITARO & FUMO, CHTD.
601 Las Vegas Boulevard
5 Las Vegas, NV 89101
Phone (702) 474-7554
6 Fax (702) 474-4210
Attorneys for Respondent



FILED

AUG 28 2020

STATE BAR OF NEVADA
BY: *B. Felix*
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

v.

CHRISTOPHER ARABIA, ESQ.,

Respondent.

Case No: OBC19-1383

RESPONDENT'S HEARING BRIEF

STATEMENT OF FACTS

Christopher Arabia ("Respondent") has been serving as the Nye County District Attorney for several years. When the Respondent took office, he took over the management of the deputy district attorneys appointed by his predecessor. One such deputy district attorney, was Michael Vieta-Kabell, who the Respondent found to be insubordinate and disrespectful. As a result, on September 18, 2019, the Respondent terminated Kabell's employment with the Nye County District Attorney's office.

On September 23, 2019, Kabell filed an appeal of his termination with the Nye County Human Resources Department, citing a Nye County Code which provides for appeals of disciplinary actions. On September 24, 2019, the Nye County Human Resources Director notified Kabell, Respondent, and the Nye County Manager via email that an appeal hearing had been scheduled for the Kabell matter for October 9, 2019. Later that day, after consulting with Chief

1 Deputy District Attorney Marla Zlotek and Deputy District Attorney Bradley Richardson, the
2 Respondent emailed the Nye County Human Resources Director and the Nye County Manager,
3 stating:

4 “It is my legal opinion as the Nye County District Attorney that you must cease
5 and desist from conducting the proposed meeting. The proposed hearing is
6 improper under NRS 252.070. Mr. Vieta-Kabell was an at-will employee
7 appointed (as opposed to hired) by the District Attorney’s Office and terminable
8 at any time with or without cause. See NRS 252.070, Nye County Board of County
9 Commissioners Resolution 95-022, and Nye County Policies and Procedures
10 Manual Rev. 5-2017 (“at will” defined). As such, I have the right to revoke Mr.
11 Vieta-Kabell’s appointment. See NRS 252.070.

12 Earlier this year, Mr. Vieta-Kabell asserted under oath that he was an “at-will”
13 employee when he gave sworn testimony that his position as Deputy DA did not
14 afford him due process protections against termination of employment. Now he is
15 contradicting his own prior sworn testimony and falsely claiming that he did have
16 such protections.

17 Please confirm via email no later than 4:00 p.m. on Thursday, September 26,
18 2019, that you have vacated the proposed hearing regarding Mr. Vieta-Kabell.”

19
20 On September 25, 2019, the Nye County Human Resources Director emailed Kabell, his
21 counsel, the Nye County Manager, and the Respondent to inform them that she had been
22 instructed by Respondent to ‘cease and desist from conducting the requested hearing’ and stating
23 that there would not be a hearing on Kabell’s appeal. Sometime after, Kabell filed a bar grievance
24 against the Respondent.

25 PROCEDURAL HISTORY

26 On April 6, 2020, the State Bar of Nevada filed a complaint against Respondent alleging
27 violations of Nevada Rules of Professional Conduct 1.7 and 8.4.

Specifically, the Complainant’s first claim alleged that there was “a significant risk” that
the Respondent’s advice to the Nye County Human Resources Director “was materially limited
by his own personal interest in defending his termination of Kabell.” Thus, they allege that he
violated RPC 1.7 Conflict of Interest: Current Clients by not informing the Nye Country Human

1 Resources Director of the alleged concurrent conflict of interest and obtaining informed written
2 consent to proceed with advising the County.

3 In their second claim, the Complainant alleges that the Respondent violated RPC 8.4 by
4 “us[ing] his position as an advisor to Nye County to improperly influence whether Kabbell received
5 an appeal hearing” thus, engaging in conduct that is prejudicial to the administration of justice.

7 **RESPONDENT’S ARGUMENT**

8 There is no dispute of material fact in the present case. Neither side disputes the
9 Respondent’s actions. The only questions are whether those actions violated established ethics
10 requirements for lawyers in Nevada and whether the State Bar of Nevada has authority to
11 discipline the Respondent for discretionary actions undertaken as part of his official duties as an
12 elected official.

13 **I. Prosecutors Have Discretionary Immunity**

14 Nev. Rev. Stat. § 41.032 states that no action may be brought against the state, state
15 agencies, political subdivisions, or any officer or employee of the state, its agencies, or its political
16 subdivisions based upon the exercise or performance of a discretionary function or duty, whether
17 or not the discretion involved is abused. Discretionary acts are defined as those which require the
18 exercise of personal deliberation, decision and judgment. *Wayment v. Holmes*, 112 Nev. 232, 234,
19 912 P.2d 816, 817 (1996).

20 Here, the Respondent had a legal obligation to provide advice to Nye County. His decision
21 to send an email telling the county to cancel the hearing was a discretionary decision done as part
22 of his job, and thus, he should be immune from any action arising from it.

23 **II. The State Bar Lacks Jurisdiction Over This Matter**

24 The instant case is about the independence of elected officials to carry out their duties
25 while also remaining members of the State Bar. Normally, decisions made by lawyers in their
26 capacity as elected officials is not reviewed by the State Bar, but instead by the Nevada Committee
27 on Ethics, which was specifically created to review conflicts of interest raised during the

1 performance of official duties. *See* NRS §281A.020(2)(a). The Commission is responsible for
2 interpreting and enforcing the provisions of the Ethics in Government Law set forth in NRS
3 Chapter 281A. which establishes the public policy and standards of conduct necessary to ensure
4 the integrity and impartiality of government, free from conflicts of interest between public duties
5 and private interests of state and local public officers and employees.¹ The Commission is charged
6 with disciplining state officials for violations that arise and occur out of their official duties or
7 within their capacity as state officials in violation of that section.

8 Here, the State Bar has overstepped their jurisdiction and is attempting to impinge on the
9 office of the Nye County District Attorney. Such a decision has concerning, far-reaching
10 implications, and is likely to act as a chilling effect whenever elected attorneys must make
11 unpopular decisions as part of their official duties.

12 **III. There was no conflict of interest and thus no violation.**

13 The Respondent, in his capacity as District Attorney for Nye County, has a statutory duty
14 to provide legal advice to Nye County and its administrators. *See* NRS 252.160. In the present case,
15 he advised the county as to how to respond to a hearing request for an employee, as is his duty.
16 The Complainant has argued that in doing so the Respondent violated ethical rules because his
17 representation of the county was materially limited by his personal interest in avoiding a hearing
18 wherein his own decision to terminate Kabell would be questioned.

19 However, this argument is flawed for two reasons. First, the Respondent had nothing to
20 gain by telling the county not to hold the hearing, because such a hearing was contrary to
21 established law. Thus, whether Distirct Attorney Arabia or another DA from his office had
22 advised the county on this issue, the answer would have been the same. This fact is not disputed
23 by the State Bar.

24 Second, any concerns that District Attorney Arabia's email was a unilateral decision
25 meant to protect himself is belied by the record. Both the decision to terminate Kabell and the

26 ¹ *See* The State of Nevada Commission on Ethics, *About NCOE*, available at
27 <http://ethics.nv.gov/About/NCOE/>, last accessed 8/2/2020.

1 decision not to hold a hearing were decisions that District Attorney Arabia with the assistance
2 and consultation of two of the top deputy district attorneys, both of whom had been with the DA's
3 office longer than he had. Together, District Attorney Arabia and these Deputy DA's discussed
4 the facts of the situation, consulted Nye County Code, and reviewed the DA handbook before
5 making each decision.

6 CONCLUSION

7 As the Respondent has maintained there was not violation of RPC 1.7 (Conflict of Interest:
8 Current Clients) or RPC 8.4(d) (Misconduct Prejudicial to the Administration of Justice) there is
9 no need for sanctions. Furthermore, if the panel was to determine that the Respondent violated
10 one or more ethical rules, the Respondent would submit that based on the fact any violation was
11 unintentional and an isolated incident, an admonition would be the appropriate sanction. The
12 Respondent has an impeccable record which demonstrates integrity and service to the community.
13 Suspension, as the State Bar has suggested as a possible sanction, would not only be excessive in
14 terms of punishment² but it would also in essence, give the State Bar the power to overturn an
15 election. Such power was not intended nor contemplated when the State Bar was founded and is
16 exactly why the Nevada Committee on Ethics exists.

17 DATED this 26th day of August, 2020.

18 /s/ Thomas F. Pitaro
19 Thomas F. Pitaro, Esq.
20 Nevada Bar No. 1332

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

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² Which is never supposed to be the purpose of a State Bar sanction anyway.



STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

CHRISTOPHER ARABIA, ESQ.
NV BAR No. 9749
Respondent.

AD HOC ORDER

IT IS HEREBY ORDERED that the following member of the Southern Nevada Disciplinary Board, JASON MAIER has been released as a panel member, and will be replaced by panel member JARROD RICKARD. The hearing will be convened on the 31st day of August 2020 at 10:00 a.m. via Zoom video conferencing.

DATED this 31 day of August, 2020.

STATE BAR OF NEVADA

By: Dana P. Oswalt
Dana P. Oswalt (Aug 31, 2020 09:14 PDT)
Dana Oswalt, Esq.
Nevada Bar No. 12061
Vice-Chair, Southern Nevada Disciplinary Board

Ad Hoc Order_Arabia


Final Audit Report


2020-08-31


Created:	2020-08-31
By:	Cathi Britz (cathib@nvbar.org)
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"Ad Hoc Order_Arabia" History

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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies a true and correct copy of the foregoing **AD**

3 **HOC ORDER** was served via email to:

- 4 1. Marc Cook, Esq. (Panel Chair): mcook@bckltd.com; SLopan@bckltd.com
5 2. Jarrod Rickard, Esq. (Panel Member): jl原因@skrlawyers.com
6 3. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
7 emily@fumolaw.com; pitaro@gmail.com .
8 4. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org
9 5. Jason Maier, Esq. (Courtesy Copy): jrm@mga;aw.com; cmj@mgallaw.com

10
11 Dated this 31 day of August, 2020.

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14 Kristi Faust, an employee
15 of the State Bar of Nevada
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Case No. OBC19-0485



STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
)
vs.)
)
CHRISTOPHER R. ARABIA,)
STATE BAR NO. 9749)
)
Respondent.)

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDATION
AFTER FORMAL HEARING

This matter involving attorney Christopher R. Arabia, Esq. ("Respondent"), Bar No. 9749, initially came before a designated Formal Hearing Panel of the Southern Nevada Disciplinary Board ("Panel") at 9:00 a.m. on August 31, 2020, via remote audio/visual appearance using Zoom hosted from Las Vegas, Nevada. The Panel consisted of Chair Marc P. Cook, Esq.; Jarrod Rickard, Esq.; and Anne Kingsley, Laymember. Assistant Bar Counsel R. Kait Flocchini, Esq., represented the State Bar of Nevada ("State Bar"). Respondent was present and represented by Thomas Pitaro, Esq. and Emily Strand, Esq.

1 The State Bar presented materials consisting of pleadings and State Bar documents,
2 which were admitted into evidence as Exhibits 1-9. Respondent offered no exhibits.

3 The Panel also heard statements from both parties. Respondent testified at the
4 request of the State Bar and on his own behalf. The State Bar offered testimony from
5 Danelle Shamrell, the Nye County Human Resources Director; Rebecca Bruch, Esq; and
6 Respondent. Respondent offered testimony from Bradley J. Richardson, Esq and Marla
7 Zlotek, Esq.

8 Based upon the evidence presented and testimony received, the Panel unanimously
9 issues the following Findings of Fact, Conclusions of Law, and Recommendation:

10 **FINDINGS OF FACT**

11 1. Respondent was admitted to the State Bar of Nevada on May 2, 2006 and is
12 an actively licensed attorney. *See* Transcript of Zoom Hearing Proceedings, dated August
13 31, 2020, ("Transcript), Exhibit 2.

14 2. During the period at issue in this matter, Respondent practiced law in Nye
15 County, Nevada. *See* Transcript, Exhibit 1 (Complaint and Answer).

16 3. The parties stipulated to venue the Formal Hearing in this matter in Clark
17 County. *See* Exhibit 1 (Scheduling Order).

18 4. Witnesses Marla Zlotek, Bradley J. Richardson, and Rebecca Bruch were
19 credible. Respondent's testimony was neutral. *See* Transcript, 184:17-25.

20 5. The Panel relied primarily on the admitted Exhibits to support its findings of
21 fact. *See* Transcript, 184:23-25.

22 6. In 2019, Respondent was the Nye County District Attorney. He continues to
23 be the Nye County District Attorney. *See* Transcript, Exhibit 1 (Complaint and Answer, ¶
24 2, respectively).

1 7. On September 18, 2019, Respondent terminated Deputy District Attorney
2 Michael Vieta-Kabell's (hereinafter "Vieta-Kabell") employment with the Nye County
3 District Attorney's office. *See* Transcript, Exhibit 1 (Complaint and Answer, ¶ 3,
4 respectively).

5 8. On September 23, 2019, Vieta-Kabell filed an appeal of his employment
6 termination with the Nye County Human Resources Department, citing a Nye County Code
7 which provides for appeals of disciplinary actions. *See* Transcript, Exhibit 3.

8 9. On September 24, 2019, the Nye County Human Resources Director notified
9 Vieta-Kabell, Respondent, and the Nye County Manager via email that an appeal hearing
10 had been scheduled for October 9, 2019 at 1:30 p.m. *See* Transcript, Exhibit 4.

11 10. In response, on the same day, Respondent emailed the Nye County Human
12 Resources Director and the Nye County Manager, but not Vieta-Kabell, stating:

13 It is my legal opinion as the Nye County District Attorney that you
14 must cease and desist from conducting the proposed meeting. The proposed
15 hearing is improper under NRS 252.070. Mr. Vieta-Kabell was an at-will
16 employee appointed (as opposed to hired) by the District Attorney's Office
17 and terminable at any time with or without cause. *See* NRS 252.070, Nye
County Board of County Commissioners Resolution 95-022, and Nye County
Policies and Procedures Manual Rev. 5-2017 ("at will" defined). As such, I
have the right to revoke Mr. Vieta-Kabell's appointment. *See* NRS 252.070.

18 Earlier this year, Mr. Vieta-Kabell asserted under oath that he was an
19 "at-will" employee when he gave sworn testimony that his position as Deputy
20 DA did not afford him due process protections against termination of
employment. Now he is contradicting his own prior sworn testimony and
falsely claiming that he did have such protections.

21 Please confirm via e-mail no later than 4:00 p.m. on Thursday,
22 September 26, 2019, that you have vacated the proposed hearing regarding
Mr. Vieta-Kabell.

23 *See* Transcript, Exhibit 5.¹

24
25 ¹ NRS 252.070 discusses a District Attorney's appointment and management of deputies and staff.

1 11. On September 25, 2019, the next day, the Nye County Human Resources
2 Director emailed Vieta-Kabell, his counsel, the Nye County Manager, and Respondent to
3 inform them that she was instructed by Respondent to ‘cease and desist from conducting
4 the requested hearing’ and stating that there would not be a hearing on Vieta-Kabell’s
5 appeal. *See* Transcript, Exhibit 7.

6 12. As Nye County District Attorney, Respondent regularly advised the Nye
7 County Human Resources Director and/or others in management positions in Nye County
8 regarding Nye County legal issues. *See* Transcript, 25:6-12, 28:13-18, and 65:6-16.

9 13. Respondent knew that any litigation regarding the termination of Vieta-
10 Kabell’s employment would trigger appointment of outside counsel. *See* Transcript, 68:24-
11 69:15 and 133:18-134:19; *see also* Transcript, 50:13-51:10.

12 14. Respondent failed to recognize the appeal hearing as an adversarial
13 proceeding that was substantially similar to litigation. *See* Transcript, 69:16-71:1 and
14 145:17-146:12.

15 15. Respondent had a personal interest in thwarting the appeal hearing because
16 it would have questioned his decision to terminate the employment of a deputy District
17 Attorney. *See* Transcript, 74:6-75:11, 102:23-103:2, and Exhibit 8.

18 16. Respondent failed to recognize that his personal interest created a significant
19 risk that his ability to fulfill his responsibilities to his client, Nye County, would be
20 materially limited. *See* Transcript, 73:11-16, 103:14-105:23, 119:2-120:9, 126:3-128:12,
21 144:9-146:12, and 151:13-152:5.

22 17. Between September 23, 2019 and September 25, 2019, no other attorney,
23 representing Nye County, communicated with the Nye County Human Resources Director
24 regarding the requested appeal hearing. *See* Transcript, 28:19-29:4 and 49:23-50:12.

1 18. The Nye County Human Resources Director relied strictly on Respondent's
2 email directive when she cancelled the appeal hearing. *See* Transcript, 26:27-28:22.

3 **CONCLUSIONS OF LAW**

4 Based upon the foregoing Findings of Fact, the Panel hereby issues the following
5 Conclusions of Law:

6 1. The Southern Nevada Disciplinary Board has jurisdiction over Respondent
7 and the subject matter of these proceedings pursuant to SCR 99.

8 2. Venue is proper in Clark County.

9 3. NRS 41.032 does not provide Respondent immunity from prosecution by the
10 State Bar of Nevada and/or discipline issued by the Nevada Supreme Court. *See*
11 Transcript, 184:5; *see also* SCR 99.

12 4. The State Bar must prove by clear and convincing evidence that Respondent
13 violated any Rules of Professional Conduct. *See* Nev. Sup. Ct. R. 105(2)(f); *In re Stuhff*,
14 108 Nev. 629, 633-634, 837 P.2d 853, 856; *Gentile v. State Bar*, 106 Nev. 60, 62, 787 P.2d
15 386, 387 (1990).

16 5. The Panel concluded, in a two to one vote, that the foregoing findings of fact
17 prove by clear and convincing evidence that Respondent violated RPC 1.7 (Conflicts of
18 Interest: Current Clients) and RPC 8.4(d) (Misconduct) when he opined to the Nye County
19 Human Resources Director that the requested appeal hearing was improper and demanded
20 that the hearing be vacated within 48 hours of his demand, without recognizing the
21 substantial risk that his personal interest in defending against the appeal could materially
22 limit his ability to fulfill his responsibilities to his client, Nye County. *See* Transcript, 185:1-
23 6.

24 6. The Panel unanimously concludes that the foregoing findings of fact prove by
25 clear and convincing evidence that Respondent's mental state was negligent and that the

1 misconduct injured the legal proceedings and the representation of Respondent's client,
2 Nye County. *See* Transcript, 185:6-9.

3 7. We evaluate The American Bar Association Standards for Imposing Lawyer
4 Sanctions' four factors to be considered in determining the appropriate disciplinary
5 sanction: "the duty violated, the lawyer's mental state, the potential or actual injury caused
6 by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *See In*
7 *re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1078 (2008). The appropriate
8 level of discipline must be determined considering "all relevant factors and mitigating
9 circumstances on a case-by-case basis." *State Bar of Nevada v. Claiborne*, 104 Nev. 11,
10 219, 756 P.2d 464, 531 (1988).

11 8. Pursuant to Standard 6.23 of the ABA Standard for Imposing Lawyer
12 Sanctions, the appropriate baseline sanction for Respondent's misconduct is a reprimand.

13 9. Pursuant to SCR 102.5, the Panel unanimously found the following
14 aggravating factors exist:

- 15 a. substantial experience in the practice of law (SCR 102.5(a)(i)); and
- 16 b. failure to accept wrongful conduct (SCR 102.5 (a)(g)).

17 10. Pursuant to SCR 102.5, the Panel unanimously found that Respondent's lack
18 of prior discipline was a mitigating factor (SCR 102.5(b)(a)).

19 11. The Panel unanimously found that the balance of the aggravating and
20 mitigating factors did not warrant a deviation from the baseline sanction of a reprimand.

21 ///

23 ///

25 ///

1 **RECOMMENDATION**

2 Based upon the foregoing Findings of Fact and Conclusions of Law, the Panel hereby
3 recommends that:

4 1. Respondent shall be issued a Public Reprimand for violations of RPC 1.7
5 (Conflict of Interest: Current Clients) and RPC 8.4 (d) (Misconduct- prejudicial to the
6 administration of justice).

7 2. Respondent shall pay costs, provided for in SCR 120, in the amount of \$1,500
8 plus the hard costs of these proceedings. Such payment shall be made no later than the
9 30th day after the issuance of the Nevada Supreme Court's Order.

10 DATED this 12 day of Nov, 2020.

11 Marc Cook

12 Marc Cook (Nov 12, 2020 14:51 PST)

13 **MARC P. COOK, ESQ., Chair**
Southern Nevada Disciplinary Panel

14 Submitted By:

15 **STATE BAR OF NEVADA**
16 **DANIEL M. HOOGE, BAR COUNSEL**

17 By: Kait Flocchini

18 **R. Kait Flocchini, Assistant Bar Counsel**
19 **3100 W. Charleston Blvd, Suite 100**
Las Vegas, Nevada 89102
20 **702-382-2200**

proposed Findings of Fact, COncclusions of Law, and Recommendation (SBN v. Arabia)

Final Audit Report

2020-11-12

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"proposed Findings of Fact, COncclusions of Law, and Recomme ndation (SBN v. Arabia)" History



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1. Marc Cook, Esq. (Panel Chair): mcook@bckltd.com; SLopan@bckltd.com
2. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com; emily@fumolaw.com; pitaro@gmail.com.
3. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

Kristi A. Faust
Kristi Faust, an employee
of the State Bar of Nevada

Case No: OBC19-1383



FILED

NOV 16 2020

STATE BAR OF NEVADA
BY: B. Felix
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
vs.)
CHRISTOPHER ARABIA, ESQ.,)
BAR NO. 9749)
Respondent.)

STATE BAR OF NEVADA'S
MEMORANDUM OF COSTS

Description	Amount
Court Reporter Fee & Transcript Fee Hearing Held August 31, 2020	\$2,297.15
Certified Mailing (\$6.86 x 1)	\$6.86
SCR 120 costs	\$1,500.00
Total:	\$3,804.01

1. I am Bar Counsel with the State Bar of Nevada. I have personal knowledge of the above-referenced costs and disbursements expended.

2. The costs set forth above are true and correct to the best of my knowledge and belief and were necessary and reasonably incurred and paid in connection with this matter.

True and correct copies of invoices supporting these costs are attached to this Memorandum of Costs.

1 3. As stated in the Findings of Fact, Conclusions of Law and
2 Recommendation, Respondent shall be ordered to pay the fees and costs of these
3 proceedings within thirty (30) days of the Issuance of the Nevada Supreme Court Order
4 matter pursuant to Supreme Court Rule 120(1).

5 Dated this 13th day of November, 2020.

6
7 STATE BAR OF NEVADA
8 DANIEL M. HOOGE, Bar Counsel

9 *Kait Flocchini*
10 By: Kait Flocchini (Nov 13, 2020 10:34 PST)
11 R. Kait Flocchini, Assistant Bar Counsel
12 Nevada Bar No. 9861
13 3100 W. Charleston Blvd, Suite 100
14 Las Vegas, Nevada 89102
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CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing

Memorandum of Costs was served via email to:

1. Thomas Pitaro, Esq. (Counsel for Respondent): Kristine.fumolaw@gmail.com;
emily@fumolaw.com; pitaro@gmail.com.
2. Kait Flocchini, Esq. (Assistant Bar Counsel): kaitf@nvbar.org

Dated this 16th day of November, 2020.

Kristi A. Faust
Kristi Faust, an employee
of the State Bar of Nevada

First Legal Depositions

333 S. Grand Ave. Suite 401
Los Angeles, CA 90071
Phone: (855)-348-4997



Sonia Del Rio
State Bar of Nevada
3100 W. Charleston Suite 100
Las Vegas, NV 89102

Invoice #59270

Date	Terms
09/16/2020	Net 30

Job #53554 on 08/31/2020 at 9:00 AM PT

Case: State Bar of Nevada vs. Arabia
Location: State Bar of Nevada
zoom virtual hearing
will email a link to court reporter, NV 89102

Shipped On: 09/15/2020
Shipped Via: Email Only
Tracking #: Electronic Only
Delivery Type: Normal
Services: Court Reporter; Videography

Description	Price	Qty	Amount
Original Transcript of Hearing			
Original & One - Electronic (225 Pages)	\$ 7.95	1.00	\$ 1,788.75
Per Diem (Full Day)	\$ 375.00	1.00	\$ 375.00
Telephonic Surcharge (50 Page Minimum) (188 Pages)	\$ 0.55	1.00	\$ 103.40
Processing & Delivery	\$ 30.00	1.00	\$ 30.00
			<hr/>
			\$ 2,297.15

Amount Due: \$ 2,297.15
Paid: \$ 0.00

Balance Due:	\$ 2,297.15
Payment Due:	10/16/2020

Kristi A. Faust

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Billing questions? Please call us at (855) 348-4997 or email us at depoclientcare@firstlegal.com

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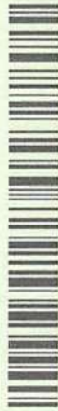
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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Christopher Arabia, Esq.
c/o Thomas Pitaro, Esq.
601 Las Vegas Blvd. South
Las Vegas, Nevada 89101



9590 9402 5541 9249 6121 09

2. Article Number (Transfer from service label)

7019 1640 0000 7877 9118

COMPLETE THIS SECTION ON DELIVERY

A. Signature		<input type="checkbox"/> Agent
X		<input type="checkbox"/> Addressee
B. Received by (Printed Name)	C. Date of Delivery	
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No		

3. Service Type

<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™
<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery
<input checked="" type="checkbox"/> Certified Mail Restricted Delivery	<input checked="" type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)

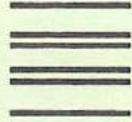
Domestic Return Receipt

PS Form 3811, July 2015 PSN 7530-02-000-9053

USPS TRACKING#



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First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

State Bar of Nevada
Attn: Breanna McCulley
3100 W. Charleston Blvd., Ste. 100
Las Vegas, NV 89102

4-10-20 / complaint / OBC19-1383

(KF)

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OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

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For delivery information, visit our website at www.usps.com[®].

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Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

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Christopher Arabia, Esq.
c/o Thomas Pitaro, Esq.
601 Las Vegas Blvd. South
Las Vegas, Nevada 89101

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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- A unique identifier for your mailpiece.
- Electronic verification of delivery or attempted delivery.
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Receipt; attach PS Form 3811 to your mailpiece;

IMPORTANT: Save this receipt for your records.

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