

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF
CHRISTOPHER R. ARABIA, ESQ.
NEVADA BAR NO. 9749

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VOLUME II

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

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STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
 Complainant,)
)
 vs.)
)
 CHRISTOPHER R. ARABIA, ESQ.,)
 Nevada Bar No. 9749,)
 Respondent.)
 _____)

REPORTER'S TRANSCRIPT OF ZOOM HEARING PROCEEDINGS
BEFORE HEARING PANEL CHAIR MARC P. COOK

Grievance File No.: OBC19-1383

Taken on Monday, August 31, 2020

At 10:08 a.m.

Las Vegas, Nevada

Reported by: Carla N. Bywaters, CCR 866

Job No. 53554

HEARING

August 31, 2020

1 APPEARANCES:

2 Panel Members:

3 MARC P. COOK, ESQ., Hearing Chair

4 JARROD L. RICKARD, ESQ., Panel Member

5 ANNE KINGSLEY, Lay Member

6 Also Present:

7 R. KAIT FLOCCINI, ESQ., Assistant Bar Counsel

8 KRISTI FAUST, Hearing Paralegal

9 THOMAS F. PITARO, ESQ., Counsel for Respondent

10 EMILY K. STRAND, ESQ., Counsel for Respondent

11 CHRISTOPHER R. ARABIA, ESQ., Respondent

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3	NUMBER	DESCRIPTION	ADMITTED
4	Complainant's		
5	1	State Bar Hearing Packet	P/A
6	2	Declaration of Kristi Faust Custodian of Records	P/A
7	3	09/23/19 E-mail, Vieta-Kabell to Shamrell, et al.	P/A
8	4	09/24/19 E-mail, Shamrell to Vieta-Kabell, et al.	P/A
9	5	09/24/19 E-mail, Arabia to Shamrell and Sutton	P/A
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HEARING

August 31, 2020

1 P R O C E E D I N G S

2 LAS VEGAS, NEVADA; AUGUST 31, 2020;

3 10:08 A.M.

4 - - -

5 CHAIR COOK: All right. We're ready to call,
6 then, State Bar of Nevada versus Christopher Arabia,
7 Case No. OBC19-1383. Can we get appearances for the
8 record.

9 MR. PITARO: Tom Pitaro with Emily Strand and
10 Chris Arabia, the Respondent.

11 MS. FLOCCHINI: Good morning, Kait Flocchini
12 here on behalf of the State Bar and also present is
13 Kristi Faust, the Hearing Paralegal.

14 CHAIR COOK: Do we have any preliminary
15 matters before we start with statements?

16 MS. FLOCCHINI: I don't have anything to
17 address at this time.

18 CHAIR COOK: All right.

19 MS. STRAND: Neither do we.

20 CHAIR COOK: Okay. Why don't we get started
21 with the State Bar making a statement.

22 MS. FLOCCHINI: Thank you.

23 CHAIR COOK: Kait, you can sit, if you're more
24 comfortable. I appreciate it, but you don't have to.

25 MS. FLOCCHINI: I absolutely appreciate that,

1 and I have learned that, if I'm sitting down, my brain
2 is not working properly. I am so conditioned now, so as
3 long as you're okay with me standing. I work to keep
4 the screen on me properly, so thank you.

5 OPENING STATEMENT BY MS. FLOCCHINI

6 MS. FLOCCHINI: We've got a very finite issue
7 for you today to decide. This case is about conflicts
8 of interest. As you know from reading the Complaint and
9 the Answer and the Hearing Briefs that were submitted to
10 you, Mr. Arabia is the District Attorney in Nye County.
11 The admitted evidence and the bulk of the issue here
12 comes out in Exhibits 3 through 7 that have been
13 admitted through the prehearing conference.

14 And what you're going to hear today is
15 testimony about those particular pieces of
16 correspondence. It was e-mail correspondence and what
17 people did in response to the e-mail correspondence, and
18 then the State Bar is going to ask you to take all of
19 that evidence and find by clear and convincing evidence
20 that there was a violation of Rule of Professional
21 Conduct 1.7 and Rule of Professional Conduct 8.4(d).

22 We appreciate your time here today. We value
23 it very much. We know this is volunteer time that
24 you're giving us and, especially Mr. Rickard at the last
25 minute providing us with his volunteer time, and so

1 we're going to be as efficient as we can with your time.

2 Just to keep us focused, to get us ready, Rule
3 of Professional Conduct 1.7(a) specifically says that
4 "Except as provided in paragraph (b), which is the
5 waiver paragraph, a lawyer shall not represent a client
6 if the representation involves a concurrent conflict of
7 interest."

8 And what we're focused here particularly on is
9 that "A concurrent conflict of interest exists if: (2)
10 There is a significant risk that the representation of
11 one or more clients" -- and, in this case, the client
12 would be Nye County -- "will be materially limited by
13 the lawyer's responsibilities" -- and that would be
14 Mr. Arabia -- "to" -- and the list is -- "another
15 client, a former client, or a third person" -- and the
16 focus here is that it also provides that the limitation
17 can be created -- "by a personal interest of the
18 lawyer."

19 Rule of Professional Conduct 8.4(d) is a much
20 more general Rule, and if the Panel finds that there was
21 not specifically a violation of 1.7(a)(2), the Panel
22 could also find a violation of 8.4. 8.4(d) specifically
23 says that it's professional misconduct to "Engage in
24 conduct that's prejudicial to the administration of
25 justice generally."

1 So you have the evidence before you.
2 Exhibits 3 through 7 are the correspondence that you'll
3 hear testimony about. Exhibits 8 and 9 are
4 correspondence that we received from Mr. Arabia during
5 the investigation of this matter, and you may hear
6 testimony about those. Those are important, because it
7 shows you Mr. Arabia's position, what he was thinking
8 when he was originally responding to the Grievance.

9 We're then going to ask you to consider all of
10 that, consider the Rules of that we have cited to you
11 today and find there was a knowing violation of those
12 Rules of Professional Conduct and that a sanction is
13 warranted in the case.

14 You're going to hear from Human Resources
15 Director, Danelle Shamrell. You're also going to hear
16 from outside counsel, Rebecca Bruch, and you're going to
17 hear from Mr. Arabia himself. And then we're going to
18 submit to you and ask you to find that violation and
19 recommend a sanction.

20 In this case, any sanction that is
21 recommended, since this is a fully contested hearing,
22 will go up to the Supreme Court for final review. And
23 they defer to this Panel as to the credibility of the
24 witnesses and the finding of fact, and so we ask you to
25 listen carefully and consider those exhibits carefully

1 during your deliberations. Thank you.

2 CHAIR COOK: Thank you.

3 Ms. Strand, Mr. Pitaro?

4 MS. STRAND: Give us just one moment, Your
5 Honor.

6 MR. PITARO: Just as a point, the Rebecca
7 Bruch, we had had a conversation just a few days ago as
8 to who the witnesses on each side was going to call, and
9 we were not told that she was going to be called. We
10 were told there were just -- the State Bar was just
11 going to call Chris Arabia and then a representative
12 from the State Bar, and then they may or may not have
13 the human resources person come in who received the
14 e-mail.

15 There was no note of her coming in with that
16 last conversation we had. She listed her as a possible
17 witness early in the case, but when we went through with
18 the telephone conversation a few days ago and said who
19 the witnesses were, that person wasn't. So, on that
20 basis, I would object to that witness being called. And
21 her name is pronounced (inaudible) Bruch is different.

22 MS. FLOCCHINI: I missed that last part,
23 Mr. Pitaro, but I think you were just referring to the
24 pronunciation of Ms. Bruch's name.

25 MR. PITARO: Yes.

1 CHAIR COOK: Please respond.

2 MS. FLOCCHINI: Thank you.

3 The State Bar did identify Ms. Bruch as a
4 witness. I believe that when we had our last meeting we
5 said that we didn't have any additional witnesses and
6 that we were maintaining the list. I don't have the
7 document in front of me. I can pull it up and confirm,
8 but as I believe that we have always identified that she
9 was a potential witness. She has percipient information
10 and was referenced in Mr. Arabia's response to the State
11 Bar, so I don't think the objection is with respect to
12 relevancy. We ask that she be permitted to testify.

13 MR. PITARO: Well, my issue is not that it
14 wasn't on a prior list. It was the last conversation we
15 had when we went over who the witnesses were going to
16 be, there was no mention of her.

17 CHAIR COOK: I have -- I don't know if there
18 was a supplemental list. It seems like this was right
19 around the hearing, which I can't find in my e-mail. I
20 didn't pull it up, but I see her in the initial one.
21 Unless she was withdrawn or not listed, I'm certainly
22 going to let her testify. So, if you have something
23 showing she was pulled, I'm happy to take a look at it,
24 but other than that, let's go ahead with the State --

25 MR. PITARO: It was a conversation. I think

1 you were on the conversation where we went over who we
2 were calling, and she mentioned two witnesses and,
3 possibly, three, which was the HR person, and I said
4 that I had three witnesses.

5 So that's the basis of it, not that there
6 wasn't early on listed as a potential witness, but the
7 last conversations we had right before this hearing was
8 when we went over who they were, so that's the
9 objection.

10 CHAIR COOK: I'm going to let her testify. Go
11 ahead with your statement.

12 MR. PITARO: All right. Ready? Do you want
13 me to start?

14 CHAIR COOK: Yes, please.

15 MR. PITARO: All right. I couldn't hear you
16 there for a minute.

17 OPENING STATEMENT BY MR. PITARO

18 MR. PITARO: First and foremost, I think you
19 have to or will understand that this Complaint we're
20 sitting on appears to be a totally unique Complaint. In
21 its essence, it is the State Bar coming in and
22 attempting to put a chill, if you will, on the ability
23 of a duly elected official to perform the items that
24 they are, in fact, required to perform by statute.

25 Chris Arabia is the duly elected District

1 Attorney of Nye County. He is the chief law enforcement
2 officer. Within the office of district attorney, he has
3 deputy district attorneys as well as other employees
4 that work with the District Attorney's Office. It is
5 undisputed, and it is not contested in this hearing --
6 as I'm sure it cannot be -- is that the deputy district
7 attorneys specifically are at-will employees.

8 And, as at-will employees, the District
9 Attorney can terminate an employee, a deputy district
10 attorney at will, really, what it means. And by the
11 State Bar coming and challenging that, they are
12 attempting to interfere with those obligations that
13 Mr. Arabia has pursuant to statute and pursuant to his
14 elected and pursuant to his oath, and so that's why this
15 thing is so unique.

16 So what the evidence is going to show in this
17 case and the way this went is that Mr. Kabell, who is
18 the individual involved, was a deputy district attorney,
19 and his performance was evaluated and had been evaluated
20 over a period of time by the District Attorney and a
21 decision was made to term (inaudible) hear that that
22 decision was not just made by Mr. Arabia.

23 Mr. Arabia has a policy that, when he's making
24 major decisions, he likes to call in other members of
25 the District Attorney's Office who have knowledge and

1 seniority and have an idea to give him aid in making his
2 decision.

3 And so he is called in, and the people that he
4 used under this case, he talked to Brad Richardson, who
5 will be a witness. He talked to Marla, and she will be
6 a witness, and then there was a third person that we
7 didn't bring in, and that was Kristen Kendall.

8 Now, these people were involved in the
9 discussions of how were they going to handle the
10 employment of Mr. Kabell, and it was determined that he
11 should be terminated, and Mr. Arabia followed that
12 advice, took the advice of the other attorneys, whatever
13 you do is appropriate, and he terminated Mr. Kabell.

14 After he terminated Mr. Kabell, Mr. Kabell
15 went to the county resource, Human Resources, and filed
16 a complaint seeking a hearing on his termination. That
17 then becomes the essence of this case as to what
18 happens. And what happens is this: Is that the human
19 relations person sends an e-mail to Mr. Arabia saying
20 that she is setting up a hearing on behalf of Mr. Kabell
21 and giving a date of when that hearing was going to be.

22 That hearing is the essence of where this
23 comes out. Because if a person is an at-will employee,
24 and Mr. Kabell was an at-will employee, then this
25 procedure is not available to an at-will employee. And

1 that was determined by two things, really, the
2 individuals who I mentioned, Brad Richardson and Marla
3 Zlotek and Kristi Kendall and Mr. Arabia sitting and
4 discussing this both before and after this issue of what
5 would happen there.

6 And so they came to the conclusion, and they
7 conveyed that to Chris that the holding of this hearing
8 was contrary to statute, it was contrary to law, and it
9 would be an illegal hearing. So Chris went, as I say,
10 took the advice of the other members that he consulted
11 in the District Attorney's Office, and he ultimately
12 made the decision to send the e-mail.

13 Now, when you listen to the background of the
14 people that he was consulting, he consulted Brad
15 Richardson. Many of you may or may not know Brad
16 Richardson. Brad basically had a very illustrious
17 career in Clark County. He was a deputy district
18 attorney. He's worked (inaudible) a firm, and towards
19 the end of his career, he decided that he'd go to work
20 out in Pahrump.

21 And he went out and was hired by Mr. Arabia's
22 predecessor when Chris came on as DA, so he has vast
23 experience in law. But also, for nine years, Brad
24 Richardson was on the ethics panel with, I think,
25 Professor Stempel down at UNLV Boyd School of Law,

1 Dennis Kennedy, who is a noted expert in the area of
2 legal ethics, and he was involved in ethical decisions.

3 When a person would call in or need an ethical
4 opinion, they would be sent to the committee, and Brad
5 would be, and he was on like nine years. So here's a
6 man who had a tremendous amount of experience not only
7 in practice of law, as well as state employers and
8 employees, but also has a keen insight into the ethics
9 of the real profession.

10 Marla is also important because she just
11 wasn't someone who stumbled in and said, "Could I have
12 your opinion?" Marla had been working for the Nye
13 County District Attorney's Office for 25 years, handled
14 most of the civil aspects of it, and had the knowledge
15 of the statutes and the codes, et cetera.

16 And she put her knowledge on that and went
17 through and came to the conclusion that this hearing
18 would violate statute, and it would affect the ability
19 of designating a person at-will employee, and so she
20 also gave her opinion that the holding of this hearing
21 under the provision they were moving would, in fact, be
22 illegal instead of add precedent in Nye County for
23 future DAs.

24 And she's also aware and will testify that, in
25 the 25 years she was there, this is the first time this

1 procedure had ever been attempted to be used for that,
2 and that's why they thought it was so important to be
3 definitive and stop it before it was so that it didn't
4 become a precedent based upon a misreading or the
5 illegality as contained in the statutes, and they will
6 testify as to that.

7 Now, so what we have then is the e-mail that
8 Chris sent --

9 Let me see that e-mail.

10 -- and this is the e-mail, as Bar Counsel has
11 said, we have agreed to a number of these things, but
12 the e-mail in question is Exhibit -- what --

13 MS. STRAND: 5.

14 MR. PITARO: -- will be Exhibit 5, and it was
15 Chris running to the head of the HR stating, and it
16 starts out, "It is the legal opinion of the Nye County
17 District Attorney that you must cease and desist from
18 conducting the proposed hearing," and then it goes on
19 explaining why the hearing is illegal stating he's an
20 at-will employee and giving the reasons.

21 And so that is the issue that we had here, and
22 when we look at what the Bar says is they say, "Well, we
23 have no problem with the issue being an at-will
24 employee, him being terminated. What we have a problem
25 was is that Chris is the one they said that terminated."

1 And what they've done is pulled out, quite
2 truthfully, an obscure portion of Rule 1.7 by saying
3 that, if there's a concurrent conflict of interest, if
4 the attorney does something, that would move his
5 personal interests, personal interest.

6 Now, there's not only a personal interest, of
7 course, and a public interest. And normally when this
8 section is used in hearings, the personal interest is a
9 person who will make a (inaudible) part of a legal
10 opinion, and the attorney is getting a benefit out of it
11 and that the client doesn't know about.

12 Here, we don't know what the personal benefit
13 to Chris Arabia is except the Bar -- and let me have
14 their final Brief -- what they come up with is they
15 finally say in their trial brief is the essence of this
16 is that Mr. Arabia gave proper legal advice at the
17 consultation with others in the office and notified the
18 Nye County Human Resources Department that the hearing
19 was illegal, and they should not conduct it.

20 And they say the reason that he did that,
21 because of the ethical violation, they blocked the
22 review of his decision -- they blocked the review of his
23 decision apparently of why he terminated Mr. Hart
24 (verbatim). Now, I suppose I don't know how one could
25 ever establish that, that one did or didn't, because

1 there's nothing tangible out there.

2 But we can look at a couple of things, and we
3 will be looking at it with the testimony and, of course,
4 the first thing if it's a personal interest; i.e., some
5 sort of a personal reason, he doesn't want the reason he
6 fired him known -- well, first, if he's an at-will
7 employee, it doesn't matter what the reason is, because
8 you can fire someone without a reason. That's the
9 essence of an at-will employee.

10 It's a very, very small limitation that when
11 you maybe have traditional sex, gender relation sort of
12 things, apparently, but at-will employees, you don't
13 need a reason. So saying that he's trying to hide what
14 his reason is, when he doesn't need a reason to begin
15 with; and, therefore, that's in violation of his oath as
16 an attorney and, apparently, his oath as the elected DA.

17 Secondly, the idea that he's going after a
18 personal interest is not a public one, he would not be
19 talking to Brad Richardson and Marla and Kristi of going
20 over the issues, first, of termination and then also how
21 to handle the issue of having this illegal hearing set
22 up and why they did it. That clearly becomes a public
23 interest.

24 The third area where this comes in, where it
25 belies what the Bar is saying is, once Chris (inaudible)

1 is 5, Exhibit 5, telling HR to cease and desist, that
2 ends his involvement with Mr. Kabell and his legal
3 issues that he has or doesn't have with the County.

4 What happens in Nye County and happens in a
5 lot of municipalities, other counties, is is that they
6 have a what's called a POOL/PACT, which is like a master
7 insurance plan where, if there are certain type of
8 disputes, the insurance company, the POOL/PACT has the
9 attorney, and they put the attorney in, and that is what
10 Ms. Bruch was.

11 So she took over, she took the case once
12 Mr. Hart was making an assertion that would have been
13 covered under the -- may or may not be covered under the
14 insurance plan, and Chris had no further interest, quite
15 truthfully, in the process. He didn't engage in
16 negotiations. He didn't engage in consultation
17 concerning how to handle the case, whatever. He was out
18 of it, so he had no personal interest in it to hide.

19 He took his actions, like he was supposed to,
20 as the duly elected District Attorney of Nye County,
21 where it was his legal obligation to advise Nye County,
22 and it was also his legal obligation to advise them when
23 they were doing a procedure that was improper and
24 illegal. That cannot be -- that cannot be -- a
25 violation of the tenets of ethics, which is for failing

1 his --

2 CHAIR COOK: Mr.Pitaro --

3 MR. PITARO: -- duties.

4 CHAIR COOK: Mr. Pitaro, I don't want to
5 interrupt, but you said that your client had a legal
6 obligation to advise. Do you have a cite for me for
7 that authority? That was a question I actually had
8 going in here.

9 MR. PITARO: Yes, NRS 252.160. That's under
10 the district attorneys statutes.

11 CHAIR COOK: Thank you. Proceed. Sorry about
12 that.

13 MR. PITARO: All right. Well, so where is he?
14 He has that, and that is, in effect, the end of his
15 involvement in this case with Mr. Kabell. And so, as I
16 say, this is an incredibly unique situation where the
17 State Bar is coming in and trying to interfere with an
18 elected official's advice, which was in the course and
19 scope of his employment.

20 And, as we played it out in some of our
21 pretrial motions, what we found so rarely unique about
22 this is that, as soon as Mr. Kabell was terminated in
23 the Nye County Public Defender's -- I mean, Nye County
24 District Attorney's Office, he goes over, and he gets
25 hired by the Nevada Bar.

1 MS. FLOCCHINI: Objection. That's been deemed
2 as irrelevant.

3 CHAIR COOK: That is not relevant for the
4 purposes of this hearing. You already had a ruling on
5 that issue.

6 MR. PITARO: Well, let me just say, the aspect
7 of bringing it up is it would have relevancy for this
8 purpose is because they are trying to say that he has
9 some hidden motive and that the issue of this Complaint
10 was based upon their employee, the one that was fired,
11 that he had an obligation to do this, so --

12 CHAIR COOK: When you get to a point where
13 you're going to call a witness on that, maybe we can
14 talk about it, but I'm not finding a relevant connection
15 here.

16 MR. PITARO: All right. So, in essence,
17 that's what we have. Now, I'm assuming that if Bruch,
18 the attorney for POOL/PACT, comes in -- and Chris will
19 explain it to you also, so you can understand why there
20 is another attorney roaming around here -- it is that
21 the County has this contract with -- I believe they
22 called it an insurance company -- that represents
23 smaller municipalities and counties around, and they
24 take over the litigation and claims, if any.

25 So all we're at here is, and according to the

1 Bar, is the only thing that they're complaining about is
2 that Chris sent an e-mail saying, "Cease and desist.
3 What you're doing is against the law." And they're
4 saying, even though they don't contest that he was
5 wrong -- he was not wrong. He was right in what he did.

6 But they're saying his motive was to say that
7 he didn't have to give a reason, and that's sort of
8 where we're at. And I think all of the evidence that we
9 have as the way he handled it belies that as well as the
10 fact that this now was then carried on by the new
11 attorney that worked or was appointed by the insurance
12 company.

13 And, therefore, there is no conflict of
14 interest in this case that he had, that he had no
15 personal interest in it. He was getting nothing out of
16 it of any interest, save and except what would accrue to
17 him as an elected official, and that it's his
18 prerogative to his office as the District Attorney.

19 CHAIR COOK: Thank you, sir.

20 Are you ready to start calling witnesses, Bar
21 Counsel?

22 MS. FLOCCHINI: I believe so. Ms. Faust,
23 we're ready?

24 CHAIR COOK: Please proceed.

25 MS. FLOCCHINI: Thank you, yes. So the State

1 Bar calls Danelle Shamrell to testify.

2 Good morning, Ms. Shamrell. Can you hear us?

3 **THE WITNESS: I can. Can you hear me?**

4 MS. FLOCCHINI: Yes, yes.

5 **THE WITNESS: Okay.**

6 MS. FLOCCHINI: I am Kait Flocchini, the
7 Assistant Bar Counsel handling this matter. Our Chair,
8 Mr. Cook, is probably in your top left corner there and
9 our other Panel Members --

10 **THE WITNESS: Okay.**

11 MS. FLOCCHINI: -- Rickard and Ms. Kingsley.

12 **THE WITNESS: Hi there.**

13 MS. FLOCCHINI: And I'm going to ask our court
14 reporter or defer to our Chair to have you sworn in.

15 CHAIR COOK: Carla, if you could, please.

16 (Witness sworn.)

17 CHAIR COOK: Please proceed.

18 MS. FLOCCHINI: Thank you.

19 DANELLE SHAMRELL,
20 having been first duly sworn, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. FLOCCHINI:

24 Q Ms. Shamrell, what do you do for Nye County?

25 A I'm the HR Director for both Nye County and

1 the town of Pahrump.

2 Q And how long have you been the HR Director for
3 Nye County?

4 A The director since 2014. I was the manager
5 prior to that, and I've been with the County since 2002.

6 Q Okay. As the HR Director, or as the HR
7 Manager previously, do you receive advice on legal
8 matters from the District Attorney's Office?

9 A We do.

10 Q Okay. And we're focused here today on
11 particular advice. I'm going to share my screen here.

12 A Okay.

13 Q This is Exhibit 3 to the hearing. Can you see
14 it?

15 A Not yet.

16 Q Not yet. It would help if I actually push the
17 "share screen" button instead of just looking at it by
18 myself. There we go. Do you see an e-mail here dated
19 September 23rd, 2019?

20 A I do.

21 Q Okay. And did you receive this e-mail from
22 Mr. Vieta-Kabell?

23 A Let me just go down to the -- I sent -- the
24 part that I'm seeing, which is the part that -- yes. I
25 received that from Mr. Vieta-Kabell, correct.

1 Q Okay. And it says that he's attaching an
2 appeal, and did he ask for a hearing as part of that
3 appeal?

4 A Yes.

5 Q Okay. And what did you do in response to
6 receiving the e-mail?

7 A I consulted with Tim Sutton, who is the County
8 Manager, because this was kind of a new area for me, and
9 I wanted to make sure that we were doing things
10 correctly. And we determined when the availability of
11 where we would locate it and when it could be with
12 enough time out, so that we were within compliance of
13 the request. And I responded to him and told him that
14 there would be a hearing on -- I'm thinking it was
15 October 9th that we scheduled the requested hearing.

16 Q Okay. And I'm going to show you Exhibit 4.

17 A Okay. Yes, it was the 9th.

18 Q Is this the hearing that you sent setting the
19 appeal -- or I'm sorry. Is this the e-mail that you
20 sent setting the appeal hearing?

21 A It is.

22 Q Okay. And what happened after you sent this
23 e-mail?

24 A I received an e-mail from the district
25 attorney, Chris Arabia, telling us -- telling me to

1 cease and desist, and we weren't going -- that he was --
2 that Mr. Vieta-Kabell wasn't entitled to a hearing,
3 according to what his investigation was.

4 Q Okay. And is this the e-mail that you
5 received from Mr. Arabia?

6 A It is.

7 Q And it tells you to cease and desist?

8 A Yes.

9 Q And requests a confirmation that the hearing
10 has been vacated, correct?

11 A Correct.

12 Q And it sets a deadline for that. What's the
13 deadline for vacating the hearing?

14 A I got the e-mail on a Tuesday, the September
15 24th, and I needed to let the DA know by September 26th
16 that I had done what he was instructing me to do.

17 Q Okay. What did you do after you received this
18 e-mail?

19 A I probably initially contacted Tim Sutton,
20 because he's my boss, but I did -- on the next day, the
21 25th, I sent an e-mail to Michael Vieta-Kabell and told
22 him that we were not having the -- I was given direction
23 to cease it, and we were not having a hearing.

24 Q Okay. Did you respond to Mr. Arabia's e-mail
25 prior to canceling the hearing?

1 **A** **No, not that I'm remembering. I just -- no, I**
2 **didn't. I just replied saying it was done.**

3 **Q** **Okay. Is this the e-mail reply that you sent?**

4 **A** **Yes, it is.**

5 **Q** **So this is an e-mail from you to Mr. Arabia,**
6 **correct?**

7 **A** **It is, yes.**

8 **Q** **Okay. And then I'm showing you Exhibit 7. Is**
9 **this the e-mail that you sent cancelling the hearing?**

10 **A** **It is.**

11 **Q** **Okay.**

12 **A** **Yes.**

13 **Q** **And can you tell the Panel exactly why you**
14 **canceled the appeal hearing?**

15 **A** **The DA's Office provides legal advice to the**
16 **County, and he told me to cancel it. And so, based on**
17 **the fact that he's who he is, the DA, I did what I was**
18 **told to do.**

19 **Q** **Did you talk to any outside counsel before you**
20 **canceled Mr. Vieta-Kabell's appeal hearing?**

21 **A** **Other than Tim Sutton, who is an attorney, I**
22 **did not. I didn't talk to anybody else.**

23 **Q** **Okay. Did you talk with Ms. Bruch, who is**
24 **typically retained as outside counsel, about canceling**
25 **the appeal hearing before you did it?**

1 A I'll be honest with you, I don't remember. It
2 was a long time ago. It was almost a year ago, and I
3 don't remember if I called her or consulted with her, so
4 that would be "I don't remember."

5 Q Okay. Was Ms. Bruch retained to handle some
6 employment issues with the DA's Office at some point?

7 A Yes.

8 Q And who does she represent in those matters?

9 A She represents the County.

10 MS. FLOCCHINI: Okay. Ms. Shamrell, those are
11 all the questions that I had for you. I'm going to stop
12 sharing my screen here.

13 THE WITNESS: Okay.

14 MS. FLOCCHINI: And Mr. Pitaro or Ms. Strand,
15 as counsel for Mr. Arabia, may have questions for you.
16 And then, as is customary, in these administrative
17 hearings, the Panel is also able to ask you questions.
18 And then, if there's any follow-up, I will do that or
19 Mr. Pitaro will do that. Okay?

20 THE WITNESS: Okay.

21 MS. FLOCCHINI: Thank you.

22 THE WITNESS: Thank you.

23 CHAIR COOK: Tom or Ms. Strand, please.

24 / / /

25 / / /

1 CROSS-EXAMINATION

2 BY MR. PITARO:

3 Q I'm raising my hand so you know who I am.

4 A Okay.

5 Q Okay. How are you today?

6 A I'm good.

7 Q All right. I want to ask you just a couple of
8 questions concerning what you said. You said that, when
9 you got the request from Mr. Kabell, you spoke to
10 Mr. Sutton?

11 A Yes.

12 Q And it was because the request was at least a
13 unique request based upon the work you had done up until
14 that time?

15 A I'm sorry. I didn't understand what you
16 asked. Could you repeat it, please?

17 Q You spoke to Mr. Sutton about it was because
18 it was, one, he was your supervisor; and, two, it was
19 sort of a unique request from a deputy -- a former
20 deputy district attorney, correct?

21 A Yes. And I'll be honest with you, this was a
22 new -- this was new to me, and I wanted to make sure I
23 was doing what I was supposed to be doing. He's my
24 boss, and so I kept him in the loop on what was being
25 asked and directed of me, what was being requested.

1 Q Absolutely, and no fault was meant by my
2 question. I just wanted to clarify that's what you did.
3 You talked to Mr. Sutton, but you did not call the
4 District Attorney and ask him concerning it?

5 A I did not. Not that I remember, I did not.

6 Q All right. So the notification, first
7 notification, to the District Attorney would have got
8 officially would have been the e-mail that you sent
9 setting the meeting up?

10 A I don't remember if he -- I don't remember, to
11 be honest with you, but that could be a yes question.
12 It might have been the only time. That could have been
13 the first time he knew that the hearing was being set,
14 but I don't know. I don't know if Tim reached out to
15 him. I don't know the answer to that. Sorry.

16 Q What you're saying is that you notified him
17 yourself once you had canceled it that it was being
18 canceled?

19 A I did notice -- I think you're asking me if I
20 noticed the DA, Chris?

21 Q Yes.

22 A Yes. I did notice him that it was -- I sent
23 an e-mail saying, "Yes, I've understood, and I canceled
24 it" or however I worded it.

25 MR. PITARO: That's it. Thank you.

1 **THE WITNESS: Thank you.**

2 CHAIR COOK: State Bar, any more questions?

3 MS. FLOCCHINI: I just have one or two quick
4 follow-ups, and I'm going to share my screen again.

5 REDIRECT EXAMINATION

6 BY MS. FLOCCHINI:

7 Q I have Exhibit 3 up on the screen,
8 Ms. Shamrell.

9 A **Yes.**

10 Q Is this the official request from
11 Mr. Vieta-Kabell to have the appeal hearing?

12 A **Yes, it is.**

13 Q And is Mr. Arabia included on the e-mail?

14 A **He is.**

15 Q Okay. And this was the first notice that you
16 got of his request for an appeal hearing, right?

17 A **Correct.**

18 Q Okay. And I'm going to show you Exhibit 7
19 again, and you testified previously this is the e-mail
20 whereby you notified Mr. Vieta-Kabell that you were
21 canceling the appeal hearing. Did you include
22 Mr. Arabia in that e-mail?

23 A **I did.**

24 Q Why did you include Mr. Arabia in the e-mail?

25 A **Because he's the one that directed me to**

1 cancel it, so I included him.

2 MS. FLOCCHINI: Okay. Those are all the extra
3 questions that I have. Thank you again.

4 **THE WITNESS: You're welcome.**

5 CHAIR COOK: Mr. Rickard, Ms. Kingsley, do
6 either of you have any questions?

7 MR. RICKARD: I don't have any questions.
8 Thank you.

9 MS. KINGSLEY: (Indicating).

10 CHAIR COOK: Thank you, Ms. Shamrell.

11 **THE WITNESS: Thank you.**

12 CHAIR COOK: You can call your next witness.

13 MS. FLOCCHINI: Thank you. Ms. Shamrell, I
14 believe Mr. Cook is excusing you.

15 MR. PITARO: Before she just --

16 MS. FLOCCHINI: And so you can just -- you can
17 leave the meeting -- I'm sorry, Mr. Pitaro?

18 MR. PITARO: Yeah, if you can take one minute,
19 I want to consult with my client for one second, I can
20 make sure that I can excuse her.

21 MS. FLOCCHINI: Sure.

22 MR. PITARO: If I may, just a couple quick
23 questions. Can you hear me?

24 **THE WITNESS: I can.**

25 CHAIR COOK: Proceed.

1 REXCROSS-EXAMINATION

2 BY MR. PITARO:

3 Q When you set the hearing date for Mr. Kabell,
4 you did not consult with Mr. Arabia about that date, did
5 you?

6 A Not that I remember.

7 Q And did you consult with Mr. Sutton?

8 A What I did was I tried to find a date that
9 worked for the room that we would have it in and things
10 like that, but I don't recall if I consulted with
11 Mr. Arabia for the date -- on the date.

12 Q And then your first notification of a date was
13 the e-mail to Mr. Arabia, that was your first
14 notification of him -- to him when the date was set?

15 A That -- yes.

16 Q Yes.

17 A As much as I remember, yes.

18 Q Just to make sure. Thank you.

19 A You're welcome.

20 CHAIR COOK: Bar Counsel, does that give you
21 any additional questions?

22 MS. FLOCCHINI: Thank you.

23 CHAIR COOK: Absolutely.

24 Ms. Kingsley or Mr. Rickard, does that give
25 you any questions?

1 MS. KINGSLEY: No.

2 MR. RICKARD: (Moves head side to side.)

3 CHAIR COOK: Okay. I think we can excuse the
4 witness now, then.

5 MS. FLOCCHINI: Thank you.

6 So, Ms. Shamrell, you're welcome to hit the
7 "leave" button, if you'd like.

8 **THE WITNESS: I can also mute and just listen**
9 **to the rest of the hearing if I want?**

10 MS. FLOCCHINI: Yes.

11 **THE WITNESS: Okay. Thank you.**

12 CHAIR COOK: Yes.

13 **THE WITNESS: Thank you.**

14 (The witness was excused and left the
15 stand.)

16 MS. FLOCCHINI: The State Bar calls Rebecca
17 Bruch as a witness.

18 Good morning, Ms. Bruch. Can you hear us?

19 Good morning. Can you hear us?

20 **THE WITNESS: I can hear you. Can you hear**
21 **me?**

22 MS. FLOCCHINI: Yes.

23 **THE WITNESS: Okay. This was a dilemma I've**
24 **never had, because I was on the phone with a judge, and**
25 **I said, "Oh, no, I have to choose between the State Bar**

1 and a judge. See you, Judge."

2 MS. FLOCCHINI: Thank you. We appreciate
3 that. Always a tricky decision, absolutely.

4 THE WITNESS: Yeah.

5 MS. FLOCCHINI: Ms. Bywaters, I defer to Chair
6 Cook who should be in your upper left corner, perhaps?

7 CHAIR COOK: Yes. Carla, you're up again.

8 (Witness sworn.)

9 MS. FLOCCHINI: Thank you. And since we don't
10 have the usual formalities of a hearing room where you
11 can tell who is who, I will introduce Mr. Rickard, who
12 is the other attorney Panel Member, and Ms. Kingsley,
13 who is our Lay Member. And then there is Mr. Arabia,
14 pardon me, the Respondent in the hearing, and his
15 counsel, Mr. Pitaro and Ms. Strand.

16 Also on the screen is Ms. Faust, who is with
17 the State Bar, the Hearing Paralegal, and in a corner,
18 you can see Ms. Kingsley's phone and Ms. Shamrell who
19 previously testified and is just observing the public
20 hearing.

21 THE WITNESS: Okay.

22 MS. FLOCCHINI: Okay.

23 THE WITNESS: Thank you.

24 MS. FLOCCHINI: Of course, yeah. So thank you
25 for taking the time today.

1 REBECCA BRUCH, ESQ.,
2 having been first duly sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. FLOCCHINI:

6 Q Ms. Bruch, can you -- you're an attorney,
7 correct?

8 A Yes. Yes, I am.

9 Q And how are you involved with Nye County
10 usually?

11 A I am panel counsel for the Nevada Public
12 Agency Insurance Pool. I'm one of their several panel
13 counsel, and I, for 19 years, have represented Nye
14 County on a whole different -- all different kinds of
15 matters that come up. When a claim is filed with the
16 Nevada -- with POOL, we call it POOL, and I get
17 assigned, and it is some -- it's mostly personnel
18 matters and then some other kind of tangentially related
19 matters.

20 Q Thank you. Were you retained on or about
21 September 25th or September 26th to represent Nye
22 County?

23 A The first contact I had about a matter --
24 about this matter -- well, kind of, sort of this
25 matter -- the first call I got was on the 25th,

1 September the 25th at about 11:15 from Donna Squires,
2 who is the claims manager for Ase Risk Management, who
3 is -- I call her the boss of me. She's the one who
4 assigns the cases.

5 Q Okay. And that contact was with respect to a
6 potential dispute or a need for representation regarding
7 Michael Vieta-Kabell, right?

8 A Yes, it was. It involved Michael
9 Vieta-Kabell.

10 Q Okay. And I just was trying to clarify. You
11 said "this matter," but it's sort of the underlying
12 matter, perhaps, or a tangential matter other than the
13 disciplinary proceeding, right?

14 A Correct.

15 Q Okay. And just to clarify, who were you
16 retained to represent in that matter with respect to
17 Mr. Vieta-Kabell?

18 A Nye County.

19 Q Okay. And did you discuss with anyone at Nye
20 County whether or not there should be an appeal
21 hearing -- let me stop. Before September 26th, did you
22 discuss with anybody at Nye County whether or not there
23 should be an appeal hearing as requested by
24 Mr. Vieta-Kabell?

25 A No. That was not the scope of my -- that was

1 not the scope of my involvement when I was called on the
2 25th of September.

3 Q Okay. And you have referenced that you
4 represent Nye County in a dispute that involves
5 Mr. Vieta-Kabell. Do you also represent Mr. Arabia as
6 the District Attorney for Nye County in that dispute?

7 A Can you ask me that again --

8 Q Uh-huh. You told us that you represent --

9 A -- please?

10 Q Yes. You told us that you represent Nye
11 County in a dispute with Mr. Vieta-Kabell?

12 A Well, there are matters that come up that
13 sometimes individuals are -- may be at odds or potential
14 conflicts between those individuals and Nye County, so
15 I -- yeah, so that's the context, because there have
16 been some disagreements and some issues where maybe
17 Mr. Arabia and Nye County were at odds with each other
18 over situations.

19 And so I, at all times, represented Nye
20 County, never Mr. Arabia or the District Attorney's
21 Office. We have discussed matters, other -- all kinds
22 of matters that have gone on that involve the District
23 Attorney's Office, but I don't represent the District
24 Attorney's Office or Mr. Arabia personally. Does that
25 make sense?

1 Q It does. Who represents Mr. Arabia with
2 respect to any disputes brought by Mr. Vieta-Kabell?

3 A Well -- sorry, you know. I'm an attorney, and
4 I just want to make sure I give you a straight answer.
5 There are situations, not necessarily this one -- well,
6 maybe this one, I just can't remember -- where because
7 there's a need for the POOL to appoint an additional, a
8 different panel counsel.

9 And there are -- there have been circumstances
10 where that has happened where separate panel counsel has
11 been appointed for Mr. Arabia or the District Attorney's
12 Office. I also believe that there have been situations
13 where maybe Mr. Arabia has privately retained someone,
14 but, you know, I can't -- I don't know any details of
15 that. So are there other people that represent the
16 District Attorney's Office or Mr. Arabia? Yes.

17 Q And specifically with respect to any dispute
18 with Mr. Vieta-Kabell, is there someone else who has
19 appeared on behalf of Mr. Arabia or been retained on
20 behalf of Mr. Arabia?

21 A Yes. There was another attorney, panel
22 counsel -- well, and I think that he was appointed by
23 POOL, because just like --

24 CHAIR COOK: Can you give a time frame?

25 THE WITNESS: A time frame as to what?

1 CHAIR COOK: When that representation you're
2 talking about occurred.

3 THE WITNESS: With the other attorney?

4 CHAIR COOK: Yes.

5 THE WITNESS: I wouldn't know when he was
6 initially contacted. I know that there was a
7 conversa -- or e-mails. There were e-mail conversations
8 about his involvement, I want to say, sometime in
9 October that they're on matters that were not -- that
10 were -- had to do with -- there was -- Mr. Vieta-Kabell
11 potentially had rights under NRS 245 to a public hearing
12 in front of the County Commissioners.

13 So there were issues about scheduling that,
14 and so, at that point, I -- so, and at that point,
15 whenever it was that they were trying to schedule that,
16 I was just flat not available. I never even got to the
17 point where I was -- whether that was my role or not.
18 And so then -- and this attorney's name is Nick Crosby,
19 and he's with Marquis Aurbach.

20 And so Nick got involved; in that, can Nick
21 cover it? And then I -- and then -- and so and he
22 couldn't, and then I believe Mr. Vieta-Kabell maybe, at
23 some point, said, "Never mind for now. I don't want a
24 245 hearing." And so it was -- my best recollection is
25 that was when Nick Crosby got involved when there was a

1 push to get the 245 hearing scheduled.

2 BY MS. FLOCCHINI:

3 Q And you believe that was in approximately
4 October of 2019?

5 A Yeah, and I'm just kind of guessing here. You
6 know, I briefly looked at my notes, and I believe
7 that's -- but, you know, whether there was any kind of
8 conversation or communication between Mr. Arabia and
9 Mr. Crosby prior to that, I have no idea. I wouldn't be
10 privy to that.

11 MS. FLOCCHINI: Okay. I think those are all
12 the questions -- I know those are all the questions I
13 have right now. Mr. Pitaro or Ms. Strand, on behalf of
14 Mr. Arabia, may have questions for you, and then our
15 administrative hearing provides that the Panel Members
16 may also have questions for you, and then we may go
17 around again. So thank you again for your time today.

18 THE WITNESS: Sure.

19 CHAIR COOK: Ms. Strand, Mr. Pitaro?

20 (Pause in proceedings.)

21 MR. PITARO: Ready.

22 CROSS-EXAMINATION

23 BY MR. PITARO:

24 Q Ms. Bruch, can you hear me?

25 A I can.

1 Q I'm here.

2 A I can hear you.

3 Q Good. All right. I just want to clarify some
4 things. You are an attorney that is hired, I take it,
5 by the insurance agency?

6 A Yeah. They would say they weren't an
7 insurance company, but they are, yeah. It's an
8 organization that provides insurance, yes, the Nevada
9 Public Agency Insurance Pool.

10 Q And that provides insurance for a number of
11 municipalities and legal entities, smaller ones in
12 Nevada, including Nye County?

13 A All over the state, yes.

14 Q And the appointment of the attorney is by
15 them, not by the County or the DA?

16 A Correct, yes. Yes, I'm appointed by their
17 risk manag -- by Ase Risk Management, the third-party
18 administrator.

19 Q Sure. And that's a normal way it would be
20 done?

21 A I'm sorry. You were breaking --

22 (Simultaneous speakers.)

23 Q And that's (inaudible). The Risk Manager gets
24 a claim, and then he assigned (inaudible), one of the
25 attorneys?

1 A You're cutting out a little bit, but I think
2 you asked me that they get notice of a claim, and then
3 it gets assigned to an attorney?

4 Q Yes.

5 A Yes. Yes, correct.

6 Q And that's what happened in this case?

7 A Yes.

8 Q Now, I want to clear something up, and that is
9 that, when you were talking about Nick Crosby being
10 appointed in it for the District Attorney's Office, that
11 had to do with the EMRB Complaint, correct?

12 A No, more than that. It was my understanding
13 it was more than that.

14 Q Okay. What was the more -- how did it relate
15 to this?

16 A Well, as I said, that there was a new -- that
17 NRS 245 hearing, that certain employees are entitled to
18 before the County Commissioners, and there was a push --
19 because Mr. Vieta-Kabell had requested, along with
20 everything else, he had requested an NRS 245 hearing.
21 There was a push to get that done and whatever date --
22 and I think there was going to be a special hearing, a
23 special date for the hearing, that I was not available
24 for.

25 There was a discussion about moving it to a

1 different date, and someone -- I couldn't tell you who
2 it was, it might have been Mr. Arabia, but I don't
3 remember -- said, "No, I want this done sooner rather
4 than later. I want him provided this hearing, this 245
5 hearing. I don't want to put it off."

6 That's what I recall, and I was just flat not
7 available. I was somewhere else that I could not be
8 there. And so then there was a discussion about, "Let's
9 see if Nick Crosby can cover that," and then -- and then
10 I had nothing more to do with the 245 hearing after
11 that.

12 Q Are you aware that human relations had set up
13 a hearing for Mr. Kabell originally back in September?

14 A Prior to my involvement, yes, it was my
15 understanding that they noticed up a hearing.

16 Q And Mr. Arabia sent a notice saying he's not
17 to do that here. Are you aware of that?

18 A Yes.

19 Q Okay. Now, the 245 hearing we're talking
20 about is a different hearing?

21 A Yes. That's a -- yeah. That's a stat -- the
22 appeal, internal appeal hearing, pursuant to policy, and
23 the NRS 245 hearing is statutory.

24 Q I just wanted to clear that up, because you
25 kept using the term "hearing." The hearing that

1 Mr. Arabia, as District Attorney, canceled or said had
2 to be canceled or that Human Resources canceled is
3 totally different than the 245 hearing that we're
4 talking about now?

5 A Completely unrelated to each other.

6 Q And, in that 245 hearing, that is where Nick
7 Crosby became involved?

8 A I don't know if he was involved before that at
9 all. All I know is that when -- that I was not
10 available to do it as the first proposed date, and so we
11 tried to -- so then I suggested how about Nick Crosby
12 getting involved, and then I was out of the loop on
13 that.

14 Q Okay. And Nick Crosby is an attorney, like
15 you, that is picked by the insurance company, if we can
16 call them that, for this hearing --

17 A Yes. Yes, he's panel counsel also.

18 Q All right. And one of the things that was
19 involved in that was -- or under the 245 hearing was to
20 give reasons for the termination, correct?

21 A Not to parse words, but no. So there is a
22 statutory -- and I couldn't tell you what it is off the
23 top of my head -- there is a statutory right for someone
24 to ask in writing why it is that they were terminated.
25 That's a right. That's independent of whatever happens

1 at a 245 hearing.

2 And I know that there was -- that
3 Mr. Vieta-Kabell requested that explanation in writing,
4 and then that was, you know, all happening at about the
5 same time as the 245 hearing.

6 Q And Mr. Arabia did give him those reasons in
7 writing?

8 A Yes.

9 Q So when Mr. Kabell made that request under
10 that provision of the law, Mr. Arabia gave him the
11 reasons that he was entitled to under that statute?

12 A Yes.

13 Q Okay.

14 A Yes. Yes. Yes, he did.

15 Q Okay. Once again, we have to separate that
16 from the original hearing aspect that was canceled at
17 the direction of Mr. Arabia, right?

18 A Correct. Yes, those are all three separate,
19 separate procedural rights.

20 Q And you said that you were representing the
21 County pursuant to your appointment by the insurance
22 board to represent them --

23 A Yes, correct.

24 Q And that you were not giving independent
25 representation to Mr. Arabia?

1 A Correct.

2 Q And when an issue came up with that under this
3 245 procedure, independent of what we're here for,
4 that's when Mr. Crosby came into it?

5 A Well, as I said, I don't know. He may have
6 been involved before, before that. I just know that his
7 name came up. I suggested him in order to, you know,
8 try and facilitate what Mr. Arabia was wanting and to
9 stick to that date that was proposed for the 245
10 hearing, and I said, "What about Nick Crosby?"

11 Q Okay. So, basically, that's all you know
12 about it?

13 A About what happened with the 245 hearing, you
14 mean, after that?

15 Q No. I mean that's how Nick got involved in it
16 at your request?

17 A Yes. As I say, he may have been involved
18 before that, but that's how -- that's the first time his
19 name came up from my perspective.

20 Q Okay, I understand. It's just when someone
21 says he may have been involved, that seems to imply that
22 a person was. You're not making any statement that
23 there was any involvement until that date that you know
24 of concerning the 245 hearing?

25 A Yeah. I would have no way of knowing that.

1 Q Okay. And you had said with the 245 that it
2 was Mr. Arabia who wanted to have that hearing moved up
3 quicker -- wanted an early date?

4 A You know, there was someone, because when I
5 said, "I can't do it on that date. Can we get a
6 different date," and there was someone pushing to keep
7 that date. I think it was Mr. Arabia, but you know, I
8 couldn't tell you. I can't tell you that for sure, but
9 I think that he was -- I think it was him who said, "No,
10 I want this done. I want to -- I want -- this is when
11 we can do it. If this is as soon as we can do it, I
12 don't want to put it off."

13 MR. PITARO: Thank you. I have nothing
14 further.

15 CHAIR COOK: Bar Counsel?

16 MS. FLOCCHINI: Sure. And it may seem a little
17 choppy, because I just want to follow up quickly on a
18 few things in order to use our panel member's time
19 efficiently, but I have just a couple of things I wanted
20 to make sure I addressed with Ms. Bruch.

21 REDIRECT EXAMINATION

22 BY MS. FLOCCHINI:

23 Q The previously noticed appeal hearing, the one
24 that's the subject of this particular disciplinary
25 matter --

1 A Yes.

2 Q -- noticed hearing was vacated before your
3 involvement, correct?

4 A I don't know when the actual notice went out
5 canceling it. I couldn't tell you that. I don't know.
6 I don't know because there was conversation about it,
7 and I believe that Mr. Arabia had already said, "No,
8 cancel that hearing." Whether the actual notice of
9 cancelation, I don't know when that went out.

10 Q Okay. Were you involved in the decision to
11 send out the cancelation notice?

12 A No.

13 Q We have talked about Nick Crosby being
14 appointed to represent Mr. Arabia. Why would separate
15 counsel be appointed for Mr. Arabia separate from Nye
16 County counsel?

17 A Well, just speaking broadly, as I said, there
18 have been times, and it's not just in Nye County, times
19 when maybe there are issues where maybe County
20 Commissioners or whoever may be at odds with the entity,
21 and so sometimes the circumstances just it's prudent to
22 have separate counsel. And so Nye County is no
23 different in that, if there are issues that arise that
24 the POOL thinks it's, you know, in the best interests of
25 everybody involved, they appoint separate counsel.

1 Q Would -- with those issues or those disputes,
2 could we call them conflicts?

3 A I guess, yeah. Yep. Well, and I would say
4 just, you know, in an abundance of caution for a POOL,
5 it may not even be an actual conflict, but if there may
6 be -- you know, they've been doing this a long time, and
7 they may look at something that could present a
8 potential conflict down the road. So just in -- you
9 know, just being prudent, they may decide that it's best
10 to do that sooner rather than later.

11 MS. FLOCCHINI: Okay. Thank you again,
12 Ms. Bruch, for your time.

13 **THE WITNESS: Sure. You're welcome.**

14 CHAIR COOK: Ms. Kingsley, Mr. Rickard, any
15 questions for the witness?

16 MS. KINGSLEY: I do --

17 (Simultaneous speakers.)

18 MR. RICKARD: Oh, go ahead.

19 MS. KINGSLEY: -- have a question.

20 EXAMINATION

21 BY MS. KINGSLEY:

22 Q I'm not quite sure what the purpose of the 245
23 hearing would be and how it applies today.

24 A So certain employees are, if you are -- if
25 you're not a management employee, certain employees --

1 and it's defined by statute, and it depends on whether
2 it's the city or county, anyway -- are entitled to have
3 a hearing before the elected board, and so the statute
4 that applies to counties is NRS 245.

5 And what it is is an opportunity for whoever
6 it is that is being terminated or potentially being
7 terminated has an opportunity to come forward and
8 present whatever they want to present. The Statute lays
9 it out that they can present.

10 They can be represented by counsel. They can
11 present evidence. They can present witnesses,
12 testimony, and then the board, the elected board, then
13 can make a decision to uphold what was decided down
14 below.

15 Q So -- oh, I must have forgotten to unmute.

16 (Simultaneous speakers.)

17 Q So is that then different, that the District
18 Attorney had the right to fire them at will? Is it a
19 totally different -- or who would -- would the decision
20 of the County override that? I don't understand --

21 CHAIR COOK: Can you hang on?

22 BY MS. KINGSLEY:

23 Q -- how they work together. Like if this went
24 forward, and the County deemed that he, Mr. -- I always
25 forget his name, but with the Complaint -- what's his

1 name --

2 (Simultaneous speakers.)

3 Q -- so much here, but anyway --

4 A I can't understand.

5 CHAIR COOK: I can't, either.

6 MS. FAUST: Can I interrupt you?

7 CHAIR COOK: Ms. Kingsley --

8 BY MS. KINGSLEY:

9 Q -- for a hearing (inaudible) county --

10 CHAIR COOK: Ms. Kingsley.

11 MS. KINGSLEY: Okay.

12 CHAIR COOK: Really big echo. So, Kristi, can
13 you find -- is the mute on on the computer? Are we
14 hearing both at once? I have muted her computer, but
15 she keeps unmuting it. So just keep the --

16 MS. KINGSLEY: I unmuted.

17 MS. FAUST: We need to keep the computer
18 muted, and then your phone can be unmuted.

19 Is that not working?

20 MS. KINGSLEY: I'm having a problem with this
21 stuff, so -- I'm afraid to play with my phone, I'm going
22 to lose something.

23 THE WITNESS: That's better.

24 MS. FLOCCHINI: That's perfect, just how you
25 are.

1 MS. KINGSLEY: Is that better?

2 CHAIR COOK: Yeah. However it is now, leave
3 it. And then can you reask the question, because I
4 couldn't understand any of it, and I'm sure the court
5 reporter couldn't, and I don't think --

6 BY MS. KINGSLEY:

7 Q I just wanted to understand, if the District
8 Attorney can fire at will, and his reading of the law
9 was to cease and desist and not to have a hearing, that
10 this person then could go to the County and ask for a
11 similar hearing or the same kind of hearing from the
12 County to be heard because he was dismissed.

13 It doesn't seem -- so are they two different
14 statutes, or does one override the other if the hearing
15 went ahead and the County said that you were fired
16 inappropriately? You know, would that override the
17 original ruling from the DA that said at-will employee
18 is not entitled to a hearing? That's what I'm trying to
19 understand.

20 A So the appeal process that if the County --
21 it's not the -- the District Attorney -- if they make a
22 determination to terminate, whether it's at will or it's
23 based on a collective bargaining agreement, whatever it
24 may be, under the -- so then, under the statute, yes,
25 they can go to the board, the County Commissioners, who

1 then can override that decision of Chris Arabia.

2 Q Okay. Thank you.

3 A But one is statutory, and one is policy.

4 MS. KINGSLEY: Thank you.

5 EXAMINATION

6 BY MR. RICKARD:

7 Q Ms. Bruch, this is Jarrod Rickard. Do you
8 know if the Nye County District Attorney's Office was a
9 participant in the 245 hearing here, the NRS 245
10 hearing?

11 A So my understanding -- don't hold me to
12 this -- my understanding is that the 245 hearing that
13 Mr. Vieta-Kabell said, "Well, I don't want to do it now.
14 I want to put it off," and I understood that it never
15 happened. That doesn't mean -- I wish that I always
16 knew everything that was going on, but I don't.

17 But that was the last I heard is that the 245
18 hearing didn't happen. Because -- well, and partly
19 because, at that point, then there became -- there came
20 discussions began about with the demand and a settlement
21 with Mr. Vieta-Kabell, and that was my understanding of
22 maybe why the 245 got put off, but I'm just guessing.

23 Q So you wouldn't know, then, whether or not the
24 DA's Office had independent counsel representing them
25 for purposes of this NRS 245 hearing, would you?

1 A It wasn't me. That's all I know. Because
2 once I said I couldn't -- I wasn't available on that
3 particular date, then Nick Crosby just kind of stepped
4 in, and everything that happened or didn't happen was
5 facilitated through him.

6 Q Well, he represented Nye County, right?

7 A No. He represented the District Attorney's
8 Office and Mr. Arabia. I represented Nye County.

9 Q Okay. So, if the 245 hearing had gone
10 forward, would there have been the participation of
11 Mr. Crosby representing the DA's Office and separate
12 counsel representing Nye County?

13 A I don't know the answer to that. I don't know
14 how they would have proceeded, because that's not my
15 call to make. That's POOL's call to make.

16 MR. RICKARD: Thank you.

17 CHAIR COOK: Do those questions bring up any
18 new questions from anybody else, starting with the State
19 Bar?

20 MR. PITARO: Well, I haven't got from the last
21 time she asked questions.

22 CHAIR COOK: I didn't hear Mr. Pitaro, but,
23 first, I wanted to find out if the State Bar had any
24 follow-ups to that.

25 MS. FLOCCHINI: I don't have any further

1 questions. I understand the background and the
2 relevancy of it, but it's not the subject of the
3 Complaint, and so we don't have any further questions.
4 Thank you.

5 CHAIR COOK: I appreciate that.

6 Mr. Pitaro, Ms. Strand?

7 MR. PITARO: Yes.

8 RECROSS-EXAMINATION

9 BY MR. PITARO:

10 Q When you had mentioned the 245, and I want to
11 get this straight as Bar coun -- (inaudible) 45
12 procedure, that is independent of the issue that we're
13 here on in the Bar complaint, and that is the hearing
14 that Mr. Arabia's as District Attorney advised HR to
15 cease on, correct? You understand that?

16 A Well, you cut out, so if you could ask me your
17 whole question. I think I know the question, but help
18 me, please.

19 Q Let me try again. I'll speak up. I'll yell
20 it this time.

21 A Okay. You know, I can hear you. It's just
22 you're cutting out.

23 Q Oh, I see. What I'm saying is that it's clear
24 the 245 hearing is something totally different than the
25 situation with Chris's, as the District Attorney's,

1 telling HR to cease and desist on that hearing, correct?

2 **A Correct. They are -- they are not mutually**
3 **exclusive. Yes, they are independent of each other.**

4 Q Okay. And then when you were asked the
5 question about the hearing, the 245 hearing, you said
6 two things. First, you said that Chris wanted to go
7 forward at the 245 hearing. That's Mr. Arabia, the
8 District Attorney, he wanted to go forward with that
9 hearing.

10 **A Well, what he didn't want was -- he did not**
11 **want it to be delayed.**

12 Q Okay. And it was Mr. Kabell who, best of your
13 knowledge, did not go forward with that hearing at all?

14 **A That was what I heard that that was -- it was**
15 **Mr. Vieta-Kabell who said, "I want to postpone it for**
16 **now."**

17 Q As far as you know, it never happened?

18 **A Not that I know of.**

19 Q You had made a statement that when you have
20 the 245 hearing that the 245 hearing is that the County
21 can overrule -- you said could overrule the termination
22 of an at-will employee by the District Attorney?

23 **A Well, no, I didn't limit it to at will.**

24 Q All right. We're talking about the DA being
25 an at-will employee --

1 A I don't -- you know, I have no -- so I don't
2 know. You know, that's a legal conclusion, and I don't
3 know whether he was an at-will employee or not. It
4 didn't matter for 245 purposes.

5 Q What's that?

6 A I said -- I said it didn't matter. Whether he
7 was at will or not, it didn't matter for the 245
8 purposes.

9 Q Well, okay. I have 245 in front of me, and
10 245 does not say -- and I'm on at 245.065, which I'm
11 sure you're familiar with, it says that the -- if I may,
12 I'm reading from it. It says "Within 30 days after
13 receipt, the dismissed employee may, in writing, request
14 a public hearing with the board of county commission to
15 determine the reasonableness of the action."

16 A I defer.

17 Q That's what this says. And so one could find
18 the action reasonable or unreasonable?

19 MS. FLOCCHINI: I'm going to object to the
20 question. We've danced around this 245 hearing, but, as
21 represented before, it's not the subject of the
22 Complaint, and I think we're getting pretty far afield
23 of the subject of the Complaint, so I object on
24 relevancy.

25 MR. PITARO: (Inaudible) brought out by as Bar

1 Counsel has spoken to. What it's saying there is 245
2 does not give the County Commission the right to
3 overturn a dismissal of an at-will employee by the duly
4 elected district attorney. This is a --

5 CHAIR COOK: I --

6 MR. PITARO: -- I'm sorry -- a different
7 section.

8 CHAIR COOK: First, I don't think it's very
9 relevant, if relevant at all, about this hearing, but
10 both sides have talked about it. I think the witness's
11 only issue with your prior question was she's not making
12 a call on at will or not when she talks about those
13 hearings.

14 But go ahead and ask the question, but I'd
15 like to move on past this 245 issue as quickly as
16 possible, because I don't think it's particularly
17 relevant.

18 MR. PITARO: Well, I guess what I'm saying is
19 is that I --

20 CHAIR COOK: I'm going to let you ask the
21 question. I understand. Let's move on it, though.

22 BY MR. PITARO:

23 Q 245.065, which deals with it, only deals with
24 the County Commission determining reasonableness of a
25 termination; is that correct?

1 A Yeah. You know, the words say what they say,
2 and it's my understanding that, then, they have the --
3 by virtue of that statute, they can overturn what has
4 happened down below.

5 Q But do you know specifically that happening,
6 ever happening with a deputy district attorney who is
7 fired as an at-will employee?

8 MS. FLOCCHINI: Objection. Relevancy.

9 MR. PITARO: If I may, I --

10 (Simultaneous speakers.)

11 MR. PITARO: -- I don't (inaudible) what it's
12 talking about up there.

13 CHAIR COOK: I'm sorry?

14 MR. PITARO: Do you want me to cease speaking?

15 MS. STRAND: He can't talk while you're
16 talking, so we have to be quiet so that it will let him.

17 MR. PITARO: Okay.

18 CHAIR COOK: Thank you, Ms. Strand.

19 Mr. Pitaro, what is it that you think that's
20 relevant for and appropriate?

21 MR. PITARO: Okay. The reason -- what I'm
22 getting at is that there is no situation where an
23 at-will employee under a -- specifically an assistant
24 deputy district attorney has ever got his job back by
25 virtue of the 245 hearing when the at-will employee,

1 which statute that we will discuss in our case, will
2 show that that is not the case. So what I'm saying is
3 we have a disagreement. What the witness has said is
4 that she -- my understanding is she didn't know if they
5 were or were not at-will employees.

6 CHAIR COOK: That objection is sustained.
7 That's not relevant. Next question, please.

8 MR. PITARO: No, I have nothing further. I
9 just was trying to clarify what the Lay Member had asked
10 the witness about, can that 245 overturn the district
11 attorney's decision. That's why I asked those
12 questions.

13 CHAIR COOK: I appreciate that. Does anybody
14 on the Panel have any follow-ups in light of those
15 questions?

16 MS. KINGSLEY: No.

17 MR. RICKARD: (Moves head side to side.)

18 CHAIR COOK: All right. State Bar, you get
19 the last shot. I don't know if you have anything left.

20 MS. FLOCCHINI: Thank you, and we have no
21 further questions for Ms. Bruch. Thank you.

22 CHAIR COOK: All right. We'll excuse this
23 witness.

24 THE WITNESS: And you're okay with -- you
25 know, I'm headed to Ely, so you don't need me to remain

1 available?

2 CHAIR COOK: That sounds right, so you can be
3 excused now. Thank you very much.

4 THE WITNESS: Thank you.

5 CHAIR COOK: Thank you.

6 THE WITNESS: Thanks.

7 (The witness was excused and left the
8 stand.)

9 CHAIR COOK: Next witness.

10 MS. FLOCCHINI: I recognize that it is 11:45,
11 and so I just want to be mindful of our time. The State
12 Bar would call Mr. Arabia to testify at this point. I'm
13 not sure if you'd like me to just ask my questions. We
14 can take a break, and then (inaudible) Mr. Arabia's
15 case-in-chief.

16 Or if we want to -- you know, sometimes we
17 combine those where I ask questions, Respondent's
18 counsel asks questions, and we go back and forth and
19 group it all together. I just want to procedurally
20 offer that information and see how you'd like to handle
21 it.

22 CHAIR COOK: Mr. Pitaro, Ms. Strand, what's
23 your preference?

24 MR. ARABIA: Just go forward, yes.

25 MR. PITARO: I'm on a diet, so I don't care

1 about lunch, and so I think we can go forward. And we
2 can go back and forth. It will be easier.

3 CHAIR COOK: Okay. With the understanding
4 that I know you don't know the answers, how long do you
5 anticipate going in direct, Counsel?

6 MS. FLOCCHINI: I don't anticipate going
7 particularly long. I think I have limited questions.

8 CHAIR COOK: So is that half hour or less? Is
9 that fair?

10 MS. FLOCCHINI: Yes.

11 CHAIR COOK: Okay. Why don't we get there,
12 and then we'll figure out where we're at, if we need to
13 take a lunch and proceed from there, then.

14 MS. FLOCCHINI: Okay. Thank you.

15 CHAIR COOK: Does that work for everybody?
16 Jarrod? Ann? Carla? Are we good, Kristi?

17 (Universal assent.)

18 CHAIR COOK: Okay. Then let's proceed that
19 way.

20 MS. FLOCCHINI: Okay. Thank you. So the
21 State Bar calls Mr. Arabia to testify as a witness.

22 (Witness sworn.)

23 CHRISTOPHER R. ARABIA, ESQ.,
24 having been first duly sworn, was
25 examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MS. FLOCCHINI:

3 Q Let's try that again. Good morning,
4 Mr. Arabia.

5 A Good morning.

6 Q I am going to share with you again Exhibit 5.
7 Do you see Exhibit 5 on the screen in front of you?

8 A Yes, I do.

9 Q Okay. And you sent this e-mail to
10 Ms. Shamrell, correct?

11 A Yes.

12 Q Were you sending this e-mail that requests
13 that she cease and desist with scheduling of the appeal
14 hearing as advice from the District Attorney or as a
15 party opponent to the appeal?

16 A As a district attorney.

17 Q Okay. I'm going to show you Exhibit 9
18 here -- no. I'm going to show you Exhibit 8 here, and I
19 want to direct you to paragraph 1(b). In this letter
20 that you sent to the State Bar, you stated that you were
21 not acting as the County's counsel when you sent the
22 e-mail to cease and desist, correct?

23 A No, I don't think it says that.

24 Q So I'm reading 1(b), and it states "I did not
25 object to Mr. Vieta-Kabell receiving a copy of my demand

1 to cancel the hearing, because I was not acting as the
2 County's counsel," right? Did I read that properly?

3 A Yes. And my recollection is that I wasn't --
4 when I said to Danelle Shamrell, who is the one who made
5 the request, that she could send it to him, it was
6 because I wasn't the County's counsel at the time. I
7 believe it was Bruch, and so if it's -- in theory, if
8 Ms. Bruch was okay with it, I would have been fine with
9 it. I didn't really have a strong feeling one way or
10 the other.

11 Q So, when you sent the e-mail, you were acting
12 as counsel, but then you're saying that when she asked
13 if she could send the e-mail to Mr. -- your e-mail
14 saying cease and desist -- to Mr. Vieta-Kabell, you
15 weren't acting as counsel for the County, right?

16 A Unless I'm mistaken on the dates, that would
17 be correct. I don't remember the exact date that he
18 made that request. But, basically, the way the process
19 works, and my understanding of the situation that we
20 were dealing with here, is the request for the appeal
21 came in on September 23rd, I think it was, and my
22 initial thoughts on receiving that were that that was
23 not a proper hear -- or excuse me -- not the request.

24 I got notice from Danelle that the hearing --
25 Danelle Shamrell that the hearing -- she had set the

1 hearing for, I think, sometime in October, and my
2 initial thought was that that was not proper because of
3 the reasons that I ended up putting in the e-mail to
4 her.

5 And that the normal way the process works is,
6 if an employee -- because this employee was not entitled
7 to that hearing, so if that employee has a claim, once
8 that becomes apparent, which would basically be, if
9 there's no appeal hearing here, then the next step for
10 that person would be presumably to maybe retain counsel
11 and go to a court proceeding or to EMRB.

12 There's any number of other appropriate
13 options, and when that happens at that point (inaudible)
14 is it appoints an attorney, Ms. Bruch, (inaudible) from
15 POOL/PACT to represent the County in that matter, and
16 so, moving forward, it would have been, I believe,
17 Ms. Bruch as counsel.

18 But my duty, I think, as the duly elected
19 District Attorney of Nye County was to take this
20 situation in which the proposed hearing, I thought, was
21 illegal and harmful to the County, and I should add that
22 I did not come to that conclusion lightly. It was my
23 first reaction, but I did --

24 Q Okay. I'm going to slow you down, Mr. Arabia.
25 It gets lost in the transcript if we don't go with the

1 question-and-answer format, so I think we were getting a
2 little afield from the question. So let me ask my next
3 question, please.

4 Did you include Mr. Vieta-Kabell in your
5 e-mail where you represented that the hearing -- that
6 the County needed to cease and desist from scheduling
7 the hearing and vacate it?

8 **A I don't have it in front of me, if I could**
9 **have just a moment, please.**

10 Q Sure. And I can show you --

11 **A Yeah, that will be fine.**

12 Q This is Exhibit 5, which is the cease and
13 desist e-mail?

14 **A Yes. According to the headers on the e-mail,**
15 **I sent it to Danelle Shamrell, and I cc'd it to Tim**
16 **Sutton, the County Manager, and no one else.**

17 Q Okay. So you did not e-mail Mr. Vieta-Kabell?

18 **A No.**

19 Q Okay. Did you e-mail it to his counsel?

20 **A No.**

21 Q Okay.

22 **A And I -- to be honest, I don't remember**
23 **whether he said he had counsel; but, no, I did not.**

24 Q Okay. And you have indicated in your
25 correspondence to the State Bar that you have deferred

1 to Ms. Bruch to advise Nye County on any matters related
2 to Mr. Vieta-Kabell's termination since September 25th,
3 correct?

4 A That sounds right. I don't know exactly what
5 you're referring to; but, yeah, that sounds right.

6 Q Okay. Why have you deferred to Ms. Bruch?

7 A Well, because my understanding -- and this is
8 the way it was when I came in as the District Attorney
9 is -- Marla Zlotek is a big believer in this -- when
10 someone makes a claim that potentially involves
11 litigation, generally, we notify POOL/PACT, and then
12 they decide what to do as far as appointing counsel.

13 And to be honest with you, I didn't really
14 inquire as to why that was. It sounded reasonable, and
15 so that's the procedure as far as I understand it.

16 Q Did you consider the appeal hearing to be
17 litigation?

18 A No.

19 Q Why not?

20 A Because he comes in and -- well, first of all,
21 I wouldn't contemplate it generally, because it's not
22 appropriate for him to have; but, secondly, I think that
23 it's all in-house in the County and with other
24 employees -- I don't know for sure, but I'm assuming the
25 way it works -- is that they would make their case in

1 front of the County Manager.

2 And then he would say either, you know, you
3 can come back or you can't come back, and if he says
4 that you can't come back, and then the person wants to
5 challenge that, then it turns into litigation, because
6 at that point you would go to some outside -- you know,
7 potentially, go out, for example, to state district
8 court or federal or what have you.

9 Q If another employee was asking for an appeal
10 hearing, like the one that Mr. Vieta-Kabell asked for,
11 would the District Attorney's Office handle it, or would
12 it be referred out to a pool panel member?

13 A I don't know exactly, and the reason for that
14 is because most county employees are covered by a
15 collective bargaining agreement, and they would spell
16 out exactly what is done, and I think that it normally
17 would be -- actually, you know what, I honestly don't
18 know what would happen at that hearing stage.

19 But I know that because you're talking about
20 people who are covered by collective bargaining
21 agreements, those would kind of provide for whatever
22 (inaudible) district attorneys, the deputy district
23 attorneys fall outside that --

24 Q Let me --

25 A -- and there's not a collective bargaining

1 agreement for them.

2 Q I apologize. Let me stop you for a second. I
3 lost it about halfway through the end of your
4 explanation. We had some static.

5 CHAIR COOK: The Internet cut out again, yeah.
6 BY MS. FLOCCHINI:

7 Q So you were telling us that there's a
8 collective bargaining agreement, and how that would
9 affect who would appear at the appeal hearing when you
10 cut out. So how does the collective bargaining
11 agreement affect who would appear at the appeal hearing
12 similar to the one that Mr. Vieta-Kabell requested?

13 A I'm sorry. We were trying to discuss if we
14 could help with the static issue, and we concluded that
15 we couldn't, but I kind of missed part of the question,
16 so --

17 Q Okay. Sure. I understand.

18 A -- if you would, please.

19 Q Yes. You were telling us how the collective
20 bargaining agreement affected who would represent the
21 County in an appeal hearing similar to what
22 Mr. Vieta-Kabell requested. So if you could finish that
23 explanation, please.

24 A Okay. My understanding is that a collective
25 bargaining agreement would set out, you know, what would

1 happen in the disciplinary context, and I never got as
2 far as thinking about that issue back in September of
3 '19, because the initial problem with the request was
4 just that it wasn't proper.

5 So I never really got to that stage of
6 considering what would have happened if -- it's really
7 kind of impossible to answer, because it's not supposed
8 to -- that's not supposed to be a hearing that he gets.
9 As far as other employees are concerned, I don't know
10 exactly. I haven't work -- had this issue come up.

11 Since I've been district attorney, I've never
12 had a situation where, as far as I know, where at least
13 my office has had one of those things come up, and so --
14 and I think, although I'm not 100 percent sure, I think
15 that the employees covered by collective bargaining
16 agreements have procedures that are separate that are
17 contained in the collective bargaining agreement.

18 And I would infer, although I don't know, but
19 those are more favorable to the employee, just because
20 it seems from what I've picked up around the County
21 since I've been in office is that (inaudible) when it
22 comes to someone who is not happy about a discipline
23 determination, and there's a process where there's
24 reprimands and suspensions and whatnot.

25 It's progressive discipline contained in the

1 CBA, the collective bargaining agreement, and it's
2 not -- so there's a process that goes on before you
3 would get as far as someone potentially being
4 terminated.

5 And I think, at that point, if the employee's
6 not happy, they're in the paradigm, if you will, for the
7 CBA, and they would not -- they wouldn't use this
8 process. But, again, that's just my kind of assessment,
9 based on -- I don't know -- osmosis, if you will, just
10 from what I've seen around the County.

11 Q Okay. I want to focus on something here. You
12 said that you didn't consider who would represent the
13 County at the appeal hearing when you were deciding to
14 send the cease and desist e-mail with respect to
15 Mr. Vieta-Kabell's request, right?

16 A Yes.

17 Q Okay. And have there been any other appeal
18 hearings similar to what Mr. Vieta-Kabell has requested
19 in your tenure as district attorney?

20 A Not with respect to deputies. I would --

21 Q That's not my question. Have there been any
22 other appeal hearings made by any other county employees
23 under the same code that Mr. Vieta-Kabell used while
24 you've been the District Attorney?

25 A I don't know.

1 Q Has the District Attorney's Office
2 participated in any other appeal hearings pursuant to
3 the same policy that Mr. Vieta-Kabell cited in his
4 request?

5 A No, I don't believe so.

6 Q The appeal hearing was set for October 9th,
7 correct?

8 A Yes.

9 Q And you requested that the hearing be vacated
10 within 48 hours -- no, 24 hours of your request,
11 correct? Oh, I take that back. I was right the first
12 time. You requested that the appeal hearing be vacated
13 within 48 hours of you sending the cease and desist
14 e-mail, right?

15 A Yeah.

16 Q Okay. What was the urgency for the
17 cancelation request?

18 A Well, and I would, emphasize it was a request.
19 It wasn't -- while the urgency was basically that
20 (inaudible) wanted to know later where I asked if it was
21 going to be canceled, I also wanted to know that,
22 because I didn't want my team -- we had already spent
23 four of us -- you know, me and three other attorneys had
24 spent -- I don't know -- probably two or three hours --
25 I don't remember exactly -- it was a long meeting

1 discussing what to do about this hearing being set, and
2 I just wanted to -- and I didn't want to have to prepare
3 for it if it wasn't going to go forward, and I figured
4 if we found out sooner that -- you know, and that would
5 also be plenty of time for them to decide what they
6 wanted to do, so that's why I made the request.

7 Q Okay. So you wanted to know whether or not
8 the hearing was going to go forward, and that's why you
9 set the timeframe of 48 hours --

10 A Yes.

11 MS. FLOCCHINI: -- right?

12 Those are all of the questions that I have on
13 the State Bar's case-in-chief. This is the final
14 witness for the State Bar's case-in-chief. I don't know
15 if we want to take some time at this point and allow
16 direct by Mr. Arabia's counsel or cross-examination on
17 those issues or how you want to sort of set the schedule
18 going forward. I recognize it's noon.

19 CHAIR COOK: Mr. Pitaro, Ms. Strand, is it
20 your intention to just cross on what Bar Counsel asked
21 or are you going to take the witness as your own as
22 well?

23 MR. PITARO: Both.

24 CHAIR COOK: Then why don't we take a break
25 now, and we'll come back and let you go through that

1 process.

2 MR. PITARO: Thank you.

3 CHAIR COOK: It's right at lunch now. Can
4 everybody be back sometime between -- I'd like to start
5 absolutely at 1:00. So if you can get back between
6 12:45 and 1:00, I know we can do that. Can we make that
7 happen, everybody?

8 MR. RICKARD: Sounds good.

9 MS. FLOCCHINI: Absolutely.

10 CHAIR COOK: Anybody have a problem with that?
11 All right. I've got to flip back and forth to make sure
12 I get everybody. All right. Well, with that said,
13 then, I will see everybody a little bit before 1:00, so
14 we can make sure we're starting at 1:00.

15 MS. FLOCCHINI: Thank you.

16 CHAIR COOK: Great. So we'll be off the
17 record right now. Thank you.

18 (Lunch recess taken.)

19 CHAIR COOK: So we are back on the record on
20 State Bar of Nevada vs. Arabia, OBC19-1383. Bar Counsel
21 has just finished her direct on the Respondent.

22 Mr. Pitaro and Ms. Strand, you guys are up.

23 MR. PITARO: Mr. -- Bar Counsel said that they
24 were done, and they basically rested. And I think it's
25 appropriate at this time to make a motion under Rule 50

1 of the Rules of Civil Procedure and motion to --

2 CHAIR COOK: I don't think they rested yet,
3 because it was going to cross -- you said you were going
4 to do cross and your direct at the same time. So until
5 you're done with cross and she gets an opportunity to
6 redirect, I don't think Bar Counsel is done. I didn't
7 hear her say she was resting on her case.

8 I just stopped to ask how you were going to
9 take the witness, whether you were going to do cross or
10 your cross and you direct.

11 MR. PITARO: She did say she's done with the
12 case-in-chief.

13 MS. FLOCCHINI: This is the last witness we
14 would call.

15 CHAIR COOK: Right. Yes. She definitely said
16 that, but she's not done with the witness yet, unless
17 you're not going to do any cross. We're in the middle
18 of this witness, Tom, right?

19 MR. PITARO: Yeah, I -- huh?

20 Well, I tell you what I'm going to do, I will
21 waive my cross, but obviously I can put him on in
22 direct, if need be, in my case-in-chief.

23 CHAIR COOK: All right. I understand that
24 perfectly. Then, I'll ask the State Bar if, at this
25 point, they rest. Okay?

1 MS. FLOCCHINI: Yes.

2 COMPLAINANT RESTS

3 CHAIR COOK: Okay. Then absolutely,
4 Mr. Pitaro, proceed.

5 MR. PITARO: Yes. We move for a judgment as a
6 matter of law under Rule 50 Nevada Rules of Civil
7 Procedure which under 50(a)(2) allows it to be made at
8 this time. And the burden of proof, as we know, on the
9 Bar Counsel to go forward is clear and convincing
10 evidence. And, for that, I cite the In re: Discipline
11 of Christopher Reade, which was a '19 -- I'm sorry -- a
12 2017 case by the Nevada Supreme Court.

13 And what it is is this: As I said, in the
14 opening part of it, what the Bar has done in this case
15 is said that it was a conflict of interest by Chris
16 Arabia when he gave legal advice to a county agency
17 which he, in fact, has to do. I mean, he is the legal
18 counsel. We gave you the cite on it, but the Bar has
19 not come back and said there was anything different.

20 But where is the -- on their trial brief,
21 which I had read in the opening, is they had -- they had
22 narrowed down because they had to, they had narrowed
23 down this case to the following: And they said that
24 Respondent used his position advising Nye County
25 officials to advance his own personal interest in

1 blocking the review of a decision that resulted in the
2 appeal process.

3 There has been no testimony by any witness
4 that Chris Arabia as DA made this decision to advance
5 his own personal interest. The State Bar brought out
6 the document that he sent, and it says "I'm making this
7 decision as the duly elected District Attorney of Nye
8 County." There is no evidence in here that he was
9 advancing his own personal interest in blocking the
10 review of his decision.

11 We assume the decision would be the decision
12 to fire. That is not true. We heard from Ms. Bruch the
13 ultimate way that people have, and what we had here was
14 specifically that Mr. Arabia, in consultation with other
15 attorneys in his office, came to the conclusion that the
16 hearing that Mr. Kabell wanted to have pursuant to that
17 section was improper, because he was an at-will
18 employee, and he so advised them -- the person as the
19 District Attorney.

20 And she came in, and she testified that "the
21 DA is the one who advises me, and based upon the
22 district attorney's advice, I canceled the hearing."
23 And Ms. Bruch came in and testified, "What I was
24 involved with had nothing to do with the hearing that
25 was canceled by Chris. My issue was a totally different

1 issue dealing with how a claimant and the insurance
2 company went," and where they even testified that
3 sometime within one of those things Chris, in fact, gave
4 reasons why he was fired.

5 But then Mr. Kabell, for some reason, didn't
6 go forward with it. But everyone agrees that that was
7 totally separate from the issue that we have here, and
8 there is no evidence, let alone clear and convincing
9 evidence, to establish the decision he made was done for
10 personal interests. If not, every person who ever makes
11 a decision would be subject to a conflict by virtue of
12 the fact that they must have some hidden personal
13 interest in it.

14 He fired the man because he felt he deserved
15 being fired in consultation with others, and he felt
16 that the County was making an illegal hearing by going
17 forward with that, and they so advised him, and they
18 listened, and they stopped, and that was the end of the
19 story there.

20 So they have not shown by clear and convincing
21 evidence of the fact, and that is the narrow fact that
22 we're here on. Because, previously when asked, we don't
23 know what the special interest is, and then in their
24 trial briefs they put that it was blocking the review of
25 his decision. And there was no blocking of a review of

1 his decision for personal interests; and, therefore, I
2 think this is an appropriate motion at this time.

3 CHAIR COOK: Bar Counsel, do you want to
4 respond, please?

5 MS. FLOCCHINI: Yes. Thank you. This is not
6 about the termination of Mr. Vieta-Kabell. This is
7 about what happened when he asked for an appeal hearing
8 and how Mr. Arabia responded to the request for that
9 appeal hearing. Mr. Pitaro has argued, one, that
10 Mr. Arabia had to give advice to the County. He had to
11 tell them what to do about this appeal hearing.

12 And, then, he's argued that the State Bar has
13 failed to show that Mr. Arabia had a personal interest
14 that would interfere with this ability to give sound
15 advice to the County about that appeal hearing. So let
16 me address those things.

17 First, whether or not Mr. Arabia had to give
18 advice. The County retained outside counsel to deal
19 with other employment issues. You heard Ms. Bruch
20 testify that she's been retained on other employment
21 issue. She was retained to deal with other tangential
22 requests made by Mr. Vieta-Kabell on behalf of the
23 County. She could have assisted the County in deciding
24 whether or not to do an appeal hearing in this
25 particular instance.

1 But, instead, Mr. Arabia within 24 hours
2 demanded that that appeal hearing be canceled, and he
3 demanded that it be done within 48 hours of his demand.
4 He directed the HR Director to cancel the hearing rather
5 than referring to other counsel. He didn't have to give
6 that advice. There were other circumstances where other
7 attorneys had been referred to to give advice.

8 The second point that there's no evidence that
9 Mr. Arabia had a personal interest in having the appeal
10 hearing canceled, I'm going to point you directly to
11 Mr. Arabia's testimony that he set the 48-hour timeline,
12 that deadline, because he wanted to know if he needed to
13 further defend his decision. He personally wanted to
14 know if he needed to get ready for a defense.

15 Instead, he was able to stop that appeal
16 hearing by demanding from the Human Resources Director,
17 who was used to getting direction from him, that the
18 hearing should be canceled. So I submit that we have
19 proven sufficient information, sufficient evidence to
20 this Panel to find there was a violation of Rule of
21 Professional Conduct 1.7.

22 Mr. Arabia had a personal interest in
23 protecting his decision, whatever that decision was, he
24 wanted it to be protected. He didn't want it
25 questioned, and he used his position of advisor to the

1 County to stop the questioning.

2 This also can constitute a violation of Rule
3 of Professional Conduct 8.4(d), which is conduct that is
4 prejudicial to the administration of justice.

5 Mr. Vieta-Kabell sought that hearing. There was a
6 process by which it could have gone through with
7 independent advice as to whether or not the hearing
8 should happen and sufficient time before the hearing was
9 going to happen, and he didn't have that opportunity.

10 Mr. Arabia inserted himself, used his position
11 as advisor to the County and stopped the question. We
12 submit that judgment as a matter of law is not
13 appropriate in this case, and we should proceed to hear
14 Mr. Arabia's case.

15 MR. PITARO: May I respond?

16 CHAIR COOK: Please.

17 MR. PITARO: I guess I don't understand the
18 argument, that because another attorney was there, that
19 they could have done something. This had nothing to do
20 with another attorney, Ms. Bruch. This had to do with a
21 decision of whether a at-will deputy district attorney
22 was terminated can use this device as a matter of law.

23 And it was the decision of the district
24 attorney, the person who was elected to make that
25 decision and the person who was legally obligated to

1 make that decision, to make that decision, and he did.
2 So there is no idea that oh, well, he should have
3 brought someone else in or maybe someone else could have
4 done it. No. This was an issue of him advising the
5 County that the procedure here was illegal. That's what
6 district attorneys do.

7 Ms. Bruch is representing the County on a tort
8 claim of some sort. I assume we call it a tort claim,
9 where this is an internal procedure of what the District
10 Attorney is going to do. That can't be a conflict when
11 a (inaudible) that is what he is supposed to do and is
12 mandated to do, and he does it. You can't say that's a
13 conflict --

14 CHAIR COOK: Mr. Pitaro?

15 MR. PITARO: Yes.

16 CHAIR COOK: You froze up for a second just as
17 you were getting to why you didn't view it as a
18 conflict, and I want to make sure I hear that, please.

19 MR. PITARO: Oh, the thing froze up?

20 CHAIR COOK: Yeah.

21 MR. PITARO: It stopped me at my best stuff.
22 Now, what it is is this, quite truthfully, it is that
23 this is what the District Attorney does. For example, a
24 District Attorney decides he doesn't want to -- that he
25 doesn't think there's probable cause to prosecute

1 someone. The State Bar can't come in and say, "Even
2 though you did your duty that's there that we think you
3 have a personal interest because you didn't want to
4 prosecute someone for a nasty case.

5 When we talk about personal interest, what
6 we're generally dealing with -- and that's why there are
7 no cases -- there's no cases like this, because
8 something like this has really never happened before.
9 The personal interest of an attorney in conflict with a
10 client and their attorney is something the attorney
11 gets. There is none of that here. This is legal advice
12 that you're supposed to give.

13 Now, what is amazing is that, well, maybe
14 Ms. Bruch could have. Well, once Chris was out of it,
15 once he did it, as he said, and he stops, and Ms. Bruch,
16 she didn't say, "Let's go back and do this. Let me see
17 if I can overturn his thing." She doesn't have the
18 authority to tell the County Commission that a statute
19 is invalid. That's what a District Attorney does or a
20 court.

21 So any -- any -- any decision that an elected
22 official would make would fall under the conflict as
23 alleged by Bar Counsel, and we know that becomes
24 ludicrous, because then no one can ever make a decision.
25 Think of the chilling effect it has. You have to do

1 this or that or we're going to come after you, and
2 that's what it is.

3 But when they narrow it down, what evidence do
4 they show that he had a personal interest in blocking a
5 review of his decision? None. He didn't. There is
6 no -- nothing he did to block the review. He stated,
7 "This is my position, and that's what it is." It was
8 followed, and it's out there for all the world to see.
9 If someone didn't like it, then there's other
10 appropriate things they can do, but that's what the DA
11 does.

12 And that's why this statute is there, so that
13 we don't have to go through this sort of thing.
14 Generally, it has to be facts. There are no facts. Not
15 one of those people indicated any fact that would say
16 that this was done out of some sort of personal benefit
17 or personal interest to Mr. Arabia. If not, any time a
18 person was -- a management fired his subordinate
19 (inaudible) becomes a conflict.

20 Then what happened? He stopped. Once he did
21 that, then the process, whatever process it was, he
22 wasn't involved in it. His thing was you can't use this
23 process of that hearing, because you're an at-will
24 employee, and there's been no dispute of that, because
25 there can't be. Because that is, in fact, not only --

1 they don't even get to say, well, to speculate, this is
2 not even a preponderance of the evidence.

3 The Supreme Court, as we're aware in the Reade
4 case and the Drascovich [sic] case, clear and convincing
5 evidence. There is no clear and convincing evidence,
6 and we think we are entitled to this as a matter of law
7 under Rule 50.

8 CHAIR COOK: Your argument is well-taken. I'm
9 going to deny it at this time. I think the testimony
10 the State Bar referenced could, in some view, be viewed
11 as evidence and interest. Also, in Exhibit 8, there is
12 a line where the Respondent says the County was acting
13 adversely to him, and that is why he told the County not
14 to conduct an improper hearing.

15 That's in his response to question 3 that
16 could be interpreted that he was acting in his personal
17 interest. I note that so that you can maybe discuss
18 that with him during your testimony as this continues.
19 But, at this time, I'm going to deny the motion, and
20 we'll go forward with the balance of the hearing. Thank
21 you.

22 MR. PITARO: All right. Let's see if we
23 can --

24 MS. FLOCCHINI: Understood. Thank you.

25 MS. STRAND: Hang on just one second. We're

1 discussing figuring out who we're calling first.

2 (Pause in proceedings.)

3 MS. STRAND: All right. We're going to call
4 Bradley Richardson, and I'm going to go grab him from
5 the other room.

6 (Discussion held off the stenographic
7 record.)

8 **THE WITNESS: All right. Can you all hear me**
9 **from this distance?**

10 (Witness sworn.)

11 CHAIR COOK: All right. Let's proceed. We
12 can hear you can fine, Brad, Mr. Richardson.

13 **THE WITNESS: Thank you, Mr. Cook.**

14 **BRADLEY J. RICHARDSON, ESQ.,**
15 **having been first duly sworn, was**
16 **examined and testified as follows:**

17 DIRECT EXAMINATION

18 BY MR. PITARO:

19 Q Mr. Richardson, can you tell us where you're
20 employed?

21 A Yes. I'm employed with the Nye County's
22 District Attorney's Office.

23 Q And how long have you been there?

24 A I just completed my third year last week, so
25 I'm starting my fourth year.

1 Q And were you hired by Mr. Arabia?

2 A No. I was hired by Angela Bello, and so I
3 commenced working in the Nye County District Attorney's
4 Office in August of 2017.

5 Q If you can just tell us your background as an
6 attorney in Nevada.

7 A Yes. I was admitted to the Nevada State Bar
8 in (inaudible). 1978, I was in Kansas where I worked
9 for the Overland Park City Attorney's Office. I was a
10 Police Legal Advisor and Assistant City Attorney, so --

11 CHAIR COOK: Mr. Richardson.

12 THE WITNESS: -- I advised the police chief --
13 yes, sir.

14 CHAIR COOK: You cut out. We didn't know when
15 you joined the State Bar.

16 THE WITNESS: Oh, sorry. So I was admitted to
17 the Nevada State Bar in 1977, and then in 1978, I was
18 admitted to the Kansas State Bar and living in Overland
19 Park, and I joined the Overland Park City Attorney's
20 Office and I was Assistant City Attorney and Police
21 Legal Advisor.

22 From there, I had an opportunity to come back
23 to Las Vegas, and I joined the Clark County District
24 Attorney's Office under Bob Miller and Rex Bell in 1979.
25 I spent almost three years there. I started with

1 prosecuting the regular robbery cases. I have a capital
2 murder conviction, but I ultimately ended up running the
3 Fraud Division for the DA's Office, and then I went into
4 private practice for 35 years.

5 The first 32 years was with a firm called
6 Gordon Silver, but I saw storm clouds on the horizon, so
7 I left there to join the firm of Fennemore Craig for
8 almost four years, but I had a desire to go back to a
9 prosecutor's office, and this opening came up in Nye
10 County, where my wife's family is from, so I took that
11 opportunity.

12 During my tenure in private practice from 2008
13 to 2017, I was a member of the Standing Committee on
14 Ethics and Professional Responsibility for the State
15 Bar. I was chair of that committee for two years.
16 During that period of time, I often presented for the
17 State Bar the annual ethics review. Initially, we
18 started doing it twice a year, once in Las Vegas and
19 once in Reno. And on that committee, at the time, I
20 joined was Dennis Kennedy and Jeff Stempel, so they were
21 very good mentors.

22 So at Nye County, I'm in the Civil Division,
23 although I handle criminal matters from time to time. I
24 advise the Sheriff's Department, the Public Guardian,
25 Public Administrator, the Planning Department, Public

1 Works. I review -- the Treasurer's Office sometimes,
2 the Recorder's Office, and the Assessor's Office. I
3 review most of the contracts. So half of the job, I
4 already knew when I got there, but I've had to do a lot
5 of study since I got there.

6 BY MR. PITARO:

7 Q Mr. Richardson, I want to direct your
8 attention to last year. Were you involved at all in the
9 process that led to the termination of Mr. Vieta-Kabell?

10 A I was.

11 MS. FLOCCHINI: Object to the question on
12 relevancy.

13 MR. PITARO: What is the relevancy?

14 CHAIR COOK: Mr. Pitaro.

15 MR. PITARO: Yeah. The relevancy is that the
16 State Bar has asserted that this process was done to
17 hide -- or to prevent the reasons for being fired.
18 Mr. Richardson, he'll testify that he engaged with
19 others with Mr. Arabia concerning whether he should be
20 terminated and the effect of it on law as far as the
21 hearings go and the ultimate decision that Mr. Arabia
22 gave to HR.

23 MS. FLOCCHINI: Would you like a response?

24 CHAIR COOK: Please.

25 MS. FLOCCHINI: The State Bar has not alleged

1 that the intention is to hide the reason for the
2 termination. This is not about the termination. This
3 is about giving advice to the HR Director and direction
4 with respect to something that would be -- that would
5 ultimately impact Mr. Arabia's personal interests.

6 We are not questioning the termination. We're
7 not questioning why the termination happened. It
8 doesn't matter. It doesn't matter what the subject
9 matter was of the advice except that it goes to
10 Mr. Arabia's personal interest in defending his
11 decision, period. So the reasons for the termination
12 are not relevant to this proceeding.

13 MR. PITARO: Well, let me respond first.
14 Obviously, it is, because this is what they've said.
15 But the State Bar has now just apparently changed their
16 whole position.

17 CHAIR COOK: I don't think they have. I think
18 they've been pretty consistent that this is not about
19 the termination, but I'll -- and, at best, it's got
20 limited relevance, but I'll let you ask Mr. Richardson a
21 few questions. I just don't think this is a key issue,
22 if it's an issue at all, so I'd like to not spend a lot
23 of time on it.

24 THE WITNESS: All right. I recall the
25 question, so I'll proceed. It's important to note that,

1 in June of 2019, there was an EMRB hearing that was
2 coming up as an action brought by some deputies in the
3 District Attorney's Office in Nye County to creep into
4 an existing union in Nye County with (inaudible) caused
5 that. The hearing was at the end of June 2019.

6 Before that, there was a closed session in
7 front of the County Commission of which I did not attend
8 nor did Mr. Arabia, but Becky Bruch addressed the
9 Commissioners on it, so we did not address the
10 Commissioners on that issue. At the end of June of
11 2019, we had the hearing. Those attorneys did not get
12 that benefit, but there was another issue that continued
13 on to the (inaudible).

14 We have a hearing set for the end of September
15 as a resumption of those proceedings. So --

16 CHAIR COOK: Mr. Richardson --

17 THE WITNESS: -- also in July of 2019 -- yes,
18 sir?

19 CHAIR COOK: Something's wrong with that
20 connection, because you keep coming in and out. You're
21 talking clear. You're talking at a good pace. You're
22 talking with good volume. It's the connection.

23 THE WITNESS: Let me sit closer to the laptop
24 that has the microphone, and maybe that will help.

25 CHAIR COOK: Maybe. I don't know that that's

1 the issue. But then the second part of this is, let's
2 tighten this up to -- I believe the question was, if he
3 consulted with you at that time, and you're talking
4 about a completely separate hearing that we don't need
5 to know about.

6 **THE WITNESS: All right. Yes, he did consult**
7 **with myself and Ms. Zlotek. That is correct.**

8 CHAIR COOK: Thank you. Mr. Pitaro.

9 BY MR. PITARO:

10 Q Let me ask you this: When the District
11 Attorney consulted with you, was this part of a plan
12 where he would consult and seek out members of the
13 District Attorney's Office in certain areas?

14 **A Yes, he would consult with Ms. Zlotek himself.**

15 MR. PITARO: Say what?

16 MS. FLOCCHINI: I'm objecting that the
17 question calls for speculation. You're asking
18 Mr. Richardson what Mr. Arabia's mindset was.

19 MR. PITARO: Well, you said his mindset and
20 his -- his mindset is, in fact, the relevant issue here.
21 That's what you're claiming.

22 MS. FLOCCHINI: I agree. I don't believe
23 that --

24 CHAIR COOK: Mr. Richardson --

25 (Simultaneous speakers.)

1 CHAIR COOK: Mr. Richardson, limit your answer
2 to your personal knowledge only.

3 THE WITNESS: Yes, sir, Mr. Cook. Mr. Arabia
4 would consult with me on some personnel HR issues within
5 the office from time to time, and he did consult with me
6 with regard to Mr. Vieta-Kabell and issues that had come
7 up with Mr. Vieta-Kabell's performance in the office.

8 BY MR. PITARO:

9 Q And who else was in those meetings?

10 A Ms. Zlotek would be in those meetings as well,
11 certainly. I'm not sure who else might have attended
12 from time to time, but certainly Ms. Zlotek would be in
13 those same meetings.

14 Q And during these meetings, you -- essentially
15 with Mr. Kabell's termination, that was something that
16 was discussed in that meeting?

17 A Yes, it was.

18 Q Okay. And the discussion was whether he was
19 or wasn't or should be terminated?

20 A Yes. We -- and I did thorough research on
21 this, it was my firm conviction that the deputy district
22 attorneys, including myself, are at will. But, beyond
23 that, there was cause for his termination, so there were
24 several factors that were included in a response
25 (inaudible) to Mr. Vieta-Kabell.

1 Q Now, after -- and so was that a collegial
2 decision that was made concerning the termination?

3 A It was a unanimous decision collegially. I
4 use another term in another context; but, yes, it was
5 uniform, unanimous, and after discussion amongst us.

6 Q Did there also come a time -- well, let me ask
7 you this: During those discussions, did Mr. Arabia ever
8 ask you to give him any sort of advice to advance his
9 own personal interest in blocking a review of any of his
10 decisions?

11 A No. There was no such request, and I never
12 inferred or imagined that it involved any personal
13 interest in Mr. Arabia.

14 Q All right. Now, there came a time then, after
15 he was terminated, and then Mr. Vieta-Kabell filed an
16 appeal with HR of Nye County, and then HR sent over a
17 time for this hearing. Are you aware of that?

18 A Yes. We were notified that day. I think it
19 was September 23rd, 2019. We went to a conference room.
20 We discussed it at length. It was Kristi Kendall, Marla
21 Zlotek, Mr. Arabia, and myself, and then we separately
22 did research. But we were -- we informed Mr. Arabia
23 unanimously that Mr. Vieta-Kabell was not entitled to
24 such a hearing, and we informed him of that fact. But
25 that was a unanimous conclusion that he was at will and,

1 **therefore, not entitled to such a hearing.**

2 Q Now, was the purpose -- when you said that you
3 didn't think he was entitled to it, that was based upon
4 existing law?

5 A That was based upon existing law, and that was
6 based on 252.070, among other things, and then the
7 Clark -- or excuse me -- Nye County Policy Personnel
8 Manual, and I cited that reference in my declaration,
9 but at-will employees were not entitled to this process.

10 Q When you were discussing the issue of the
11 appeal and came to the conclusion that it was a
12 violation of Nye County and Nevada law, that was the
13 decision you came to?

14 A That was the decision we came to.

15 Q Okay. And did that decision take into account
16 that Mr. Arabia was -- were you giving that to him, so
17 that he would advance his own personal interest in
18 blocking the review of that decision?

19 A No --

20 MS. FLOCCHINI: Objection. Calls for
21 speculation as to Mr. Arabia's intent. Mr. Richardson
22 can testify as to his intent in writing his memo, but he
23 can't testify about Mr. Arabia's intent.

24 MR. PITARO: But he can actually testify to
25 this, because it goes to the state of mind of the

1 discussion that he's in that is there, because this Bar
2 is trying to say that, based upon these discussions in
3 this, that that is somehow a personal interest, and
4 we're entitled to get into that.

5 CHAIR COOK: Mr. Richardson, again, you can
6 testify to your own personal knowledge. I don't want
7 you speculating as to what Mr. Arabia was thinking or
8 anything like that.

9 THE WITNESS: Yes, sir.

10 BY MR. PITARO:

11 Q Go ahead.

12 A I was not made aware of any personal motives
13 or motivation by Mr. Arabia. What I was focused on was
14 the integrity of the DA's Office historically, and in
15 other rural counties where deputy DAs universally,
16 historically, and by law, were at will. And, certainly,
17 we wanted to avoid any waiver of that principle which I
18 saw this hearing, accede to that hearing would be
19 violative of the law and the principle. It would
20 constitute a waiver.

21 Furthermore, the EMRB hearing was still going
22 on on another issue that could have been raised there by
23 Mr. Vieta-Kabell. He certainly (inaudible) was right
24 before (inaudible) and he could add that to things to
25 talk about at the EMRB hearing. So I saw that as a

1 remedy or he could go to District Court, but there was
2 no personal motivation to my knowledge.

3 It was upholding integrity in violative rule
4 and law that deputy DA's were at-will employees, with
5 the exception of Clark County, and that was legislated
6 in, and I researched all that legislation and talked to
7 Ben Graham who was involved in that process in 1993, so
8 that was my concern. There was no personal interest
9 involved.

10 BY MR. PITARO:

11 Q Well, let me ask you this: While you were in
12 this meeting, did Mr. Arabia ask you to help him come to
13 any decision so that he could advance his own personal
14 interest?

15 MS. FLOCCHINI: Objection.

16 THE WITNESS: No.

17 MS. FLOCCHINI: Calls for speculation. It's
18 the same thing.

19 CHAIR COOK: No. I think he asked if
20 Mr. Richardson was specifically asked that by
21 Mr. Arabia, so I'm going to let -- with that limitation,
22 and I think that's what Mr. Pitaro was asking, anyway.
23 With that limitation Mr. Richardson, please.

24 MS. FLOCCHINI: Understood.

25 THE WITNESS: Yes, sir. No. There was no

1 request, no indication, no express or implied -- no
2 express or implied request that this was related to any
3 personal interest.

4 BY MR. PITARO:

5 Q Let me ask you this: When you came to the
6 conclusion, based on your research and so advised
7 Mr. Arabia that you felt that the request that the
8 hearing was in violation of Nevada law and Nye County
9 policy, did you give him that advice with the
10 understanding that he would use that advice so he could
11 advance his own personal interest in blocking the review
12 of this decision?

13 A No. I did not give Mr. Arabia that advice to
14 advance any personal interest stated or implied, any
15 personal interest of his. It was to protect that
16 principal and acknowledgment of the law that deputy DA's
17 were at will, not only in Nye County but in other
18 counties including Washoe County.

19 Q And let me ask, did Mr. Arabia at any time
20 ever indicate to you that his actions in notifying Human
21 Resources that the appeal by Mr. Kabell was improper and
22 illegal and should not be given? Did he ever indicate
23 to you in any way that he did that to advance his own
24 personal interest?

25 A No, he did not.

1 Q And your advice on the decision was based upon
2 the law, your reading of the law?

3 A That's correct.

4 Q And the only conclusion that you were led to
5 was that this hearing was illegal and shouldn't go
6 forward?

7 A That's correct and would constitute a waiver,
8 potentially, of the longstanding at-will provisions of
9 the district attorney's employment and be against state
10 law on that in our Policy Personnel Procedure Manual.

11 MR. PITARO: I have nothing further then.

12 CHAIR COOK: Counsel?

13 MS. FLOCCHINI: Thank you.

14 CROSS-EXAMINATION

15 BY MS. FLOCCHINI:

16 Q I just have a couple of quick questions,
17 Mr. Richardson. You testified earlier that the focus of
18 your advice and your research was to protect the
19 integrity of the District Attorney's Office, correct?

20 A Protect the integrity of the at-will
21 employment status of deputy district attorneys.

22 Q Okay. Do you remember the date on which the
23 hearing was to take place?

24 A Counsel, which hearing?

25 Q Okay. Do you remember the --

1 **A Oh, you mean --**

2 Q -- meeting on which --

3 (Simultaneous speakers.)

4 Q -- Mr. Vieta-Kabell's appeal hearing was to
5 take place?

6 **A I do not recall the exact date, Counsel.**

7 Q Okay. I'm going to share my screen here, and
8 I will go to Exhibit 4. I'm showing you Exhibit 4, and
9 in that document Ms. Shamrell has stated that the appeal
10 hearing was scheduled for October 9th, presumably 2019,
11 since you were in the year 2019. Do you have any reason
12 to dispute that that was the date on which that appeal
13 hearing was going to take place?

14 **A That is the date that Ms. Shamrell has put in**
15 **her e-mail.**

16 Q And you don't know of any other date, do you?

17 **A No.**

18 Q Okay. Were you aware that Mr. Arabia demanded
19 that Ms. Shamrell vacate the hearing within 48 hours of
20 him identifying that "we should cease and desist from
21 conducting the hearing"?

22 **A I'm aware that his e-mail stated that.**

23 Q Okay. And the interest in having that hearing
24 vacated was to protect the integrity of the district
25 attorney's ability to terminate at-will employees. Did

1 I state that correctly?

2 A I believe that is the primary concern, yes.

3 Q And did you consider any other way that this
4 interest could be protected, such as maybe by a motion
5 filed in the appeal?

6 A Counsel, I'm a little unsure of your question.
7 At that point, I knew several things to be true.
8 Ms. Bruch was advising the County on employment matters,
9 and we had a pending EMRB hearing in which they have
10 amended their Complaint in that proceeding and were set
11 for hearing at the end of this month. So I knew that to
12 be a very easy remedy for Mr. Vieta-Kabell to use if he
13 had any concern.

14 Q So did you, in advising Mr. Arabia, consider
15 any other method by which the District Attorney's Office
16 could protect its interests in terminating employees
17 at-will in this appeal hearing other than demanding
18 within 48 hours that the hearing be vacated?

19 A I do not recall advising of any other
20 procedural motions or anything else with regard to that
21 hearing. It was --

22 Q Okay.

23 A -- my opinion --

24 (Simultaneous speakers.)

25 Q Let me ask the question, Mr. Richardson. You

1 didn't consider that a motion could be filed, correct?

2 **A A motion where?**

3 **Q A motion could have been filed -- submitted to**
4 **the Human Resources Director for consideration. Did you**
5 **consider that?**

6 **A I am not aware of such a procedure.**

7 **Q Did you consider --**

8 **A -- any motion --**

9 **Q -- where --**

10 **A Excuse me, Counsel. Can I finish?**

11 **Q (Indicating).**

12 **A Any motion related to such a proceeding would**
13 **acknowledge the validity of such a proceeding. So, no,**
14 **we did not advise or consider filing a motion related to**
15 **that proceeding because it was illegal.**

16 **Q Okay.**

17 **CHAIR COOK:** Hang on. Hang on a second. I
18 just want to make sure I understand the answer.
19 Mr. Richardson, so does that mean you didn't consider
20 filing a motion or you considered filing a motion, but
21 thought it would have been procedurally improper or
22 substantively improper?

23 **THE WITNESS:** Okay. I thought it was, you
24 know, any -- any -- no, I did not consider filing a
25 motion, because the entire proceeding in my mind was

1 illegal and improper, and so I would not validate it in
2 any way, shape, or form. He just wasn't entitled to it.

3 BY MS. FLOCCHINI:

4 Q Mr. Richardson, are you aware that the e-mail
5 that Mr. Arabia sent, telling Ms. Shamrell to cease and
6 desist with the hearing and to vacate the hearing, did
7 not include Mr. Vieta-Kabell or his counsel?

8 A I -- yeah, I don't recall there being any
9 other persons on that e-mail. It was just Ms. Shamrell
10 to my knowledge. I was not aware, did not know, did not
11 think that there were any other recipients.

12 Q Okay. And would it -- I think that this would
13 be consistent with your prior testimony, but you, in
14 advising Mr. Arabia, didn't consider that a noticed
15 request to vacate the hearing would be appropriate in
16 response to Mr. Vieta-Kabell's request, correct?

17 A A notice from the District Attorney's Office?

18 Q From Mr. Arabia that a noticed request to
19 vacate the hearing, you didn't consider whether or not a
20 noticed request would have been appropriate, did you?

21 A Well, I would think that Ms. Shamrell would
22 provide that notice.

23 Q Okay.

24 A That would --

25 MS. FLOCCHINI: That's all the questions that

1 I have, Mr. Richardson. Thank you.

2 CHAIR COOK: I think you answered it,
3 Mr. Richardson, and she's passed the witness back to
4 Mr. Pitaro.

5 REDIRECT EXAMINATION

6 BY MR. PITARO:

7 Q You were asked if were you aware of Mr. Kabell
8 not being notified by District Attorney Arabia. Was
9 there any reason -- was there any obligation for him to
10 tell Mr. Kabell that he was giving legal advice to his
11 client?

12 A No, there wasn't any obligation.

13 Q And then you were asked about this notice
14 requirement. Is there such a thing in this procedure?

15 A No, there was not.

16 Q So, since there was no procedure, you
17 obviously wouldn't consider it?

18 A That's correct.

19 Q And you didn't consider the other things,
20 because you felt that the whole thing was illegal,
21 right?

22 A That's correct.

23 Q And that's the advice that you gave
24 Mr. Arabia?

25 A Yes.

1 Q Based upon your analysis of the law?

2 A That's correct.

3 Q And your 40-odd years' experience?

4 A 43 years -- well, at that time, it was 42
5 years. They go by quick.

6 MR. PITARO: All right. I have nothing
7 further.

8 CHAIR COOK: Ms. Kingsley, do you have any
9 questions?

10 MS. KINGSLEY: (Moves head side to side.)

11 CHAIR COOK: Mr. Rickard, do you have any
12 questions?

13 MR. RICKARD: No questions. Thank you.

14 CHAIR COOK: And I do not, either. So,
15 Mr. Pitaro, you could excuse Mr. Richardson.
16 Mr. Richardson, thank you for coming by and testifying.

17 And call your next witness, please.

18 THE WITNESS: Thank you for giving me the
19 opportunity. Thank you.

20 (The witness was excused and left the
21 stand.)

22 MS. STRAND: Hey, Kristi --

23 MR. PITARO: We're going to need a minute.

24 MS. STRAND: -- I think we have Marla in the
25 waiting rooming, but I'm not --

1 MR. PITARO: No, she isn't.

2 MS. STRAND: I think so, but I'm not -- oh,
3 no?

4 MS. FAUST: No one's come in.

5 MS. STRAND: All right. Let me text her then.
6 The court's brief indulgence.

7 MS. FAUST: You're on mute, Kait.

8 MS. FLOCCHINI: Okay. Would you like to go
9 off the record, Chair Cook, and we can give everyone a
10 minute to stretch?

11 CHAIR COOK: What are we doing? We're trying
12 to track down a witness?

13 MS. FLOCCHINI: Yes.

14 CHAIR COOK: Then why --

15 MS. STRAND: -- trying to put her into the
16 Zoom meeting.

17 CHAIR COOK: Okay. Yeah, let's take five
18 minutes. And I'm not going to shut anything off, but
19 let's take five minutes and give you time to do that,
20 and then we'll get going with the next witness.

21 MS. FLOCCHINI: I was particularly thinking we
22 could let Ms.Bywaters know she had a break, so.

23 CHAIR COOK: Yeah, absolutely. Thank you,
24 Kait.

25 MS. FLOCCHINI: Thanks.

1 (Recess taken.)

2 CHAIR COOK: Are we all back and ready to get
3 started?

4 MS. STRAND: We have to call our witness.

5 MR. PITARO: All right.

6 CHAIR COOK: Ms. Strand, next witness.

7 MS. STRAND: We call Marla Zlotek, and I think
8 she's in the waiting room.

9 MR. PITARO: Can you hear us?

10 CHAIR COOK: It still says "connecting." It
11 might take a second here.

12 **THE WITNESS: Hello?**

13 MS. STRAND: There you are.

14 **THE WITNESS: Okay. Sorry.**

15 MR. PITARO: Can you hear us now?

16 **THE WITNESS: Yes.**

17 MR. PITARO: Okay. The clerk will swear you
18 in.

19 (Witness sworn.)

20 MARLA ZLOTECK, ESQ.,
21 having been first duly sworn, was
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. PITARO:

25 Q Could you tell us where you're employed.

1 **A** **I'm employed for Nye County at the Nye County**
2 **District Attorney's Office.**

3 **Q** And how long have you been an Assistant
4 District Attorney at the Nye County's District
5 Attorney's Office?

6 **A** **Since September 1995.**

7 **Q** 25 years?

8 **A** **Yes, sir.**

9 **Q** And do you know -- obviously, Mr. Arabia is
10 the DA?

11 **A** **Correct.**

12 **Q** Now, I want to direct your attention to the
13 termination of a Mr. Vieta-Kabell.

14 **A** **Okay.**

15 **Q** Are you aware of that?

16 **A** **Yes, sir.**

17 **Q** All right. And did you take part in a
18 discussion with Mr. Arabia and Mr. Richardson and
19 others, Kristi Kendall, concerning the termination?

20 **A** **Yes.**

21 MS. FLOCCHINI: If I may, I would object to
22 the question based on relevancy. I appreciate the
23 Chair's rulings previously, but I want to make sure that
24 the objection is on the record.

25 CHAIR COOK: I appreciate that. Obviously, my

1 ruling is going to be the same. We're going to be able
2 to get into it. If this is the same testimony that Brad
3 Richardson gave, and you're going to solicit it from a
4 new witness, though, I'll still let you do it as long as
5 you can expedite it.

6 MR. PITARO: Okay.

7 CHAIR COOK: If there's something new or
8 different you're going to get from her, then let me
9 know, and we'll get you more time.

10 BY MR. PITARO:

11 Q And was this a common practice with Mr. Arabia
12 to consult with you and Mr. Richardson and others
13 concerning important decisions he was making?

14 A Yes.

15 Q Now, I want to go to the decision to terminate
16 Mr. Vieta-Kabell. You were involved in that?

17 A Yes.

18 Q Could you tell us basically what you did and
19 what your involvement was.

20 A And this is regarding the termination?

21 Q Termination, we're going to go to both of them
22 here.

23 A Okay. Yes. I've had discussions with the
24 District Attorney, Mr. Arabia, and also including Brad
25 Richardson regarding the reasons for the decision that

1 led up for his termination or separation from the
2 County.

3 Q And when you -- and you conveyed those to
4 Mr. Arabia?

5 A Yes, through a discussion with the District
6 Attorney.

7 Q And did you concur in the decision to
8 terminate Mr. Kabell?

9 A Yes, I -- yes, I agreed with that.

10 Q All right. And you were aware that was, in
11 fact, done?

12 A Pardon me?

13 Q And you were aware that was, in fact, done; he
14 was terminated?

15 A Yes.

16 Q I want to go to the next issue, and that is
17 the issue that Mr. Kabell asked for an appeal through
18 the HR Department of his termination. Are you aware of
19 that?

20 A Yes, sir.

21 Q And did Mr. Arabia also consult with you and
22 Mr. Richardson and others concerning that?

23 A Yes.

24 Q And can you tell me what you did concerning
25 your involvement in that and your research into that

1 issue?

2 A Absolutely. Research, I began with
3 discussion, and then it continued with looking at the
4 Nye County Personnel and Policy Manual, also with the
5 Nye County Code, specifically Section 2, I believe,
6 dealing with married (phonetic) personnel system. And
7 then, of course, I looked at Lexis, case law, AG opinion
8 regarding the status and the reasons for termination and
9 due process, if any.

10 That also included a review of any NRS that
11 are on point and also the legislative history regarding
12 appointments of deputy district attorneys versus
13 employee issues so that, you know, that world of
14 research would be anything and everything I could
15 regarding the issue of termination with Michael
16 Vieta-Kabell.

17 Q And did you convey that information to
18 Mr. Arabia?

19 A Yes, I did.

20 Q And what did you tell him that your feeling
21 was concerning this hearing Mr. Kabell sought?

22 A The conclusion after the legal research and
23 discussion, legislative history, the NRS, the Nye County
24 Code and Policy and Procedure Manuals was that he was
25 not entitled to the hearing as he requested citing to

1 the personnel manual.

2 Q And was there any doubt in your mind based on
3 your legal research?

4 A For my opinion, absolutely not.

5 Q Thank you. And that you conveyed to
6 Mr. Arabia?

7 A Yes, sir.

8 Q And you also conveyed that to other members
9 that were there --

10 A Yes, sir.

11 Q -- at these meetings?

12 A Yes, sir.

13 Q Were you all in agreement to that?

14 A Yes.

15 Q Did Mr. Arabia ever ask you to come to this
16 decision so that it would help him or his having a
17 personal interest in the outcome?

18 A Never.

19 Q Did that ever come up in any discussion?

20 A Never.

21 Q And the decision that you came up to would not
22 change based upon the law, would it?

23 MS. FLOCCHINI: Objection. Calls for
24 speculation.

25 MR. PITARO: That was a little -- let me

1 rephrase it.

2 BY MR. PITARO:

3 Q The decision that you came up with concerning
4 that this appeal process -- this appeal process was
5 improper and illegal, that was your conclusion based
6 upon your reading of the law?

7 A Yes.

8 Q And that's what you gave it on?

9 A Yes, absolutely.

10 Q And Mr. Arabia didn't ask you to use other
11 influences concerning his well-being or his interest?

12 A Never, never.

13 Q Now, you said that you have been working in
14 the Nye County District Attorney's Office for 25 years?

15 A Correct.

16 Q And, I take it, a lot of deputy DAs have come
17 and gone out there?

18 A Yes, there have been.

19 Q Based upon your knowledge of the Clark -- I
20 mean, the Nye County District Attorney's Office during
21 the 25 years that you were there, has this appeal
22 process that Mr. Vieta-Kabell tried to use, was that
23 ever used before?

24 A Not to my knowledge, never.

25 Q So this was like the first time it was coming

1 up?

2 **A Yes, sir.**

3 **Q And then that's why you did the extensive**
4 **research on it?**

5 **A Absolutely.**

6 **Q And this would -- the decision would have an**
7 **effect in the way not only this District Attorney's**
8 **Office would be used but also other offices in the**
9 **state? That is, the opinion was not just limited to a**
10 **particular District Attorney's Office as to at-will**
11 **employees?**

12 **A Yes. Now I do understand. Yes, absolutely.**
13 **The conclusion, legal conclusion, we based and came to**
14 **could be applicable to other District Attorneys' Offices**
15 **that don't have the 700,000 population trigger and then**
16 **those applicable CBAs that may give guidance or change**
17 **that status, so yes.**

18 **Q And based on what you're saying on that, just**
19 **so the Panel knows that, for example, Clark County has a**
20 **different procedure by virtue of a state legislative**
21 **act, and others have different ways of doing it, but Nye**
22 **County and other counties use the at-will employee?**

23 **A Yes.**

24 **MR. PITARO: I have nothing further. Thank**
25 **you.**

1 CHAIR COOK: Bar Counsel?

2 MS. FLOCCHINI: Sure. Thank you.

3 CROSS-EXAMINATION

4 BY MS. FLOCCHINI:

5 Q Good afternoon, Ms. Zlotek.

6 A Good afternoon.

7 Q Forgive me for butchering your name. It
8 happens to me all the time also. I apologize.

9 A It's fine. Thank you.

10 Q Who has handled other employment issues that
11 have come up in the DA's Office since Mr. Arabia's
12 tenure started?

13 A Myself, Kristi Kendall has weighed in,
14 Michelle Nelson currently, recently hired, Bradley
15 Richardson has handled issues with HR.

16 Q And if there's a question as to any of the
17 decisions that are made in the District Attorney's
18 Office, is outside counsel brought in to handle those
19 questions?

20 A I don't know if you mean every decision or
21 determination or issue determined by the DA's Office we
22 have to bring in outside counsel, or when there's
23 conflicts we need to, or when there's litigation, and we
24 have to contract insurance with insurance pools. So
25 there's many instances both in the criminal and civil

1 side that outside counsel can be employed or hired
2 either by statute, contract with insurance, or if
3 there's conflicts. So I guess the answer is yes, there
4 are times when there's outside counsel.

5 Q Okay. You have been with the Nye County
6 District Attorney's Office for a very long time, so I
7 believe it's apropos to ask whether or not the appeal
8 hearing that Mr. Vieta-Kabell sought has ever been
9 instigated by any other Nye County employees?

10 A Not that I recall.

11 Q Okay.

12 A And that knowledge would be from my civil
13 duties where part of that would be agenda item review,
14 so by looking at the agenda and having to look at draft
15 agendas and be present for the Board of County
16 Commissioners meetings where those public hearings would
17 take place, I would be familiar with review of every
18 agenda item.

19 So, to my recollection, I have never recalled
20 seeing a hearing demand under the NRS or the hearing
21 demanded under the Policy and Procedure Manual Sections
22 11 or 12, wherever it is, towards the end.

23 Q So you don't remember there ever being an
24 appeal hearing requested pursuant to the Nye County
25 policy?

1 **A No.**

2 **Q When you were researching whether or not the**
3 hearing was appropriate, did you consider, if the
4 hearing moved forward, who would be defending the
5 District Attorney's decision?

6 **A Yes, those discussions. Yes, absolutely.**

7 **Q And who did you anticipate would be defending**
8 the District Attorney in an appeal hearing that
9 Mr. Vieta-Kabell requested if it had gone forward?

10 **A I don't recall a determination being made,**
11 just the questions and exploring the potential responses
12 or answers for that. So a lot of questions came up, if
13 he had followed through and say, "Here, if this hearing
14 occurs, what would it be like? What would happen? Who
15 are the parties? Who has the burden of proof? Who
16 would respond? Can you respond?

17 **"Would you have to respond? Who represents**
18 and has attorneys? What is the outcome? Then what does
19 the statute say or give direction?" And we explored
20 those, because you always want to run it through on both
21 sides and all levels, but no clear-cut answers were --
22 we didn't come upon clear-cut answers.

23 **Q Who did you consider would be representing the**
24 County's position in the appeal hearing?

25 **A The Commissioners would be, according to the**

1 NRS statute for that hearing, the County Commissioners
2 would have counsel. The District Attorney is counsel.
3 Yet, at the same time, the District Attorney could be a
4 witness party called by Michael Vieta-Kabell or would,
5 perhaps, be there to answer for his client, the Board of
6 County Commissioners.

7 So it's a little bit of a quandary, so as you
8 explore all those questions, you go, "I don't really
9 know. There's no playbook for this."

10 Q Would the District Attorney, Mr. Arabia, have
11 been called to explain his reason for termination if
12 that appeal hearing had gone forward?

13 A I think that's a hypothetical. If the --
14 Michael Vieta-Kabell, who --

15 MR. PITARO: If I may, I'm going to object to
16 that, because the testimony of the witness is that this
17 hearing is improper and would not go forward; therefore,
18 there is no hearing that we're speculating on and how
19 you would do it.

20 MS. FLOCCHINI: And --

21 MR. PITARO: There is no (inaudible) so you
22 can't argue that in this particular situation how a
23 hearing would go that was illegal.

24 MS. FLOCCHINI: Ms. Zlotek testified that they
25 did consider what might happen. She played out the

1 scenario if this hearing went forward, and so I'm
2 exploring that testimony.

3 MR. PITARO: But her testimony is that the
4 conclusion they came to --

5 CHAIR COOK: I know what the testimony is, but
6 overruled. Go ahead.

7 MS. FLOCCHINI: Thank you. Ms. Bywaters, can
8 you read that question back, please.

9 (Record read.)

10 BY MS. FLOCCHINI:

11 Q Did you hear the question, ma'am?

12 A **Yes, yes. And my response would be it's**
13 **unknown.**

14 Q Did you consider that when you were doing your
15 research about the appeal hearing?

16 A **No.**

17 MS. FLOCCHINI: Thank you for your time here
18 today, Ms. Zlotek.

19 **THE WITNESS: Thank you, ma'am.**

20 MR. PITARO: If I may, there are a couple of
21 questions.

22 REDIRECT EXAMINATION

23 BY MR. PITARO:

24 Q You were asked the questions about the
25 research that you did where you came to the conclusion

1 that such a hearing as requested by Mr. Vieta-Kabell was
2 improper because it was contrary to statute and contrary
3 to the policy of Nye County; is that correct?

4 **A Correct.**

5 Q And you just said that the 25 years you were
6 there, you're not aware of this procedure ever being
7 used?

8 **A Correct.**

9 Q Okay. Now, when you told Mr. Arabia that you
10 felt that the hearing was illegal and improper and
11 should not happen, did you believe that that created a
12 conflict of interest in Mr. Arabia by him so advising
13 the Human Resources Department?

14 **A No.**

15 MS. FLOCCHINI: Objection. Calls for a legal
16 conclusion.

17 CHAIR COOK: Sustained. We've got to make
18 that call, Mr. Pitaro.

19 MR. PITARO: No, but the question is they're
20 asking if there's any conflicts, so I'm entitled to know
21 what her position was.

22 CHAIR COOK: No.

23 (Simultaneous speakers.)

24 MR. PITARO: Let me rephrase it.

25 CHAIR COOK: Okay.

1 BY MR. PITARO:

2 Q So if you felt that your opinion that
3 Mr. Vieta-Kabell was not entitled to have the hearing
4 that had (inaudible) because it was illegal and contrary
5 to policy and had never been done before, if you felt
6 that that created a conflict of interest for Mr. Arabia
7 if he so advised the Human Resources Department, is that
8 something that you would have told him about?

9 A Yes.

10 Q And you didn't, did you?

11 A Correct. I did not.

12 MR. PITARO: I have nothing further.

13 EXAMINATION

14 BY CHAIR COOK:

15 Q Ms. Zlotek, are you familiar with the
16 procedure in which the Nye County has solicited somebody
17 like Ms. Bruch, who testified earlier, some kind of
18 independent counsel, are you familiar with the process
19 on how somebody through that insurance company is
20 obtained?

21 A Yes.

22 Q How, from your perspective?

23 A My perspective in most cases, the insurance
24 pool, when we have any kind of tort claim, any potential
25 claim of threat to sue, an actual filing regarding tort

1 litigation, then what we call is POOL/PACT or the
2 insurance pool is notified, and then they have assigned
3 counsel.

4 Q How long -- I'm sorry -- go ahead.

5 A And that's the majority of involvement.
6 There's also another part of that that's the POOL/PACT
7 or the other areas where pool counsel is assigned or
8 involved at our office is not always aware of or
9 involved in getting the request to have POOL/PACT
10 involved.

11 And those can do with EEOC claims, vehicle
12 accidents, where it doesn't come through our office or
13 we received no notification, so there's kind of like two
14 halves to it.

15 Q On the latter half, like the EEOC
16 complaints --

17 A Yes, sir.

18 Q -- who does the insurance company represent in
19 the EEOC complaint?

20 A It would be Nye County.

21 Q Okay. The County?

22 A Yes, sir.

23 Q And have you personally notified the carrier
24 to have an attorney represent the County under any
25 circumstances?

1 A Yes, absolutely.

2 Q How long does that process typically take from
3 when you put in the notification until you get counsel?

4 A We do put in the notice of claim, and it's
5 e-mailed, and then we usually get a response from the
6 insurance adjuster, which is Ase Risk Management, as to
7 whether the claim, then, is set up. It's reviewed, and
8 then a response is given to us whether it's covered
9 under POOL/PACT insurance of coverage or not. And that
10 can be anywhere from instantaneously to a day, a week, a
11 determination even be made a month later, if there's an
12 determination of coverage by the pool.

13 So it can be instantaneously a clear case of
14 a, let's say, federal law suit with a tort allegation of
15 unlawful force all the way down through a cause of
16 action that is state court, district court, not really a
17 tort, but there's some, say, injunctive relief on a
18 First Amendment claim, but injunctive relief is a cause
19 of action covered, and that may be three weeks later
20 that the determination is made.

21 CHAIR COOK: I appreciate that. Thank you.

22 THE WITNESS: Thank you.

23 CHAIR COOK: Does anybody else on the Panel
24 have any questions?

25 / / /

1 EXAMINATION

2 BY MR. RICKARD:

3 Q Ms. Zlotek, have you ever requested POOL/PACT
4 counsel because of a conflict of interest?

5 A Yes.

6 Q Can you give me some examples of when you've
7 done that.

8 A Oh, let me think. God, there's -- on claims
9 that would come in and where I would think there could
10 be a conflict of interest, then I would send it to the
11 pool saying there could be a conflict of interest for
12 the following reasons. We may not be able to do this
13 case because, or a claim, or if a case threatened
14 litigation, because our office could be a witness in the
15 case.

16 Or we can't do in house, for example, we have
17 pending -- for example, there's a gentleman who has a
18 conditional use permit, a land-use issue, that I filed
19 as in-house counsel on behalf of the DA's Office for
20 injunctive relief with the Fifth Judicial District
21 Court. The same attorney on the other side filed a
22 federal tort action First Amendment/Fifth Amendment
23 taking violation.

24 So I couldn't represent both cases, because
25 they were so intertwined in the history and the

1 representation before the Board of County Commissioners
2 for the hearings that outside counsel took the federal
3 case, because it was under the contract of insurance,
4 but the federal case alleged slightly the tort violation
5 of the rights, but asked for underlying injunctive
6 relief, which I would have to do, because it was
7 excluded.

8 But I was doing the state case, and some of
9 the issues would cause me to be an witness to testify as
10 to the accuracy of the underlying facts in the federal
11 case. So we have them, and I can't think off the top of
12 my head, but it would be if our office is so involved as
13 a party that we can't do the case internally that we
14 would give it to pool, so that would be that conflict.

15 We always have the clear conflict with
16 criminal cases, which we use the NRS mechanism to go
17 before the Board of County Commissioners to have outside
18 counsel, such as the A.G., to cross into the criminal
19 case, for example, if an employee in our office was
20 criminally charged, so that one. But with POOL/PACT,
21 it's when there's intertwinement or someone in our
22 office could be a witness or we can't do it internally,
23 because the conflict would involve someone in our
24 office.

25 We don't have a lot of them. If we have to do

1 the case, we do the case. If it's a POOL/PACT insurance
2 case, it goes there. But there could be the
3 intertwinement where, like if it has to do with, let's
4 say, an ethics violation or a violation where I could be
5 a witness in a case, but I couldn't then civilly defend
6 that case.

7 Or impeachment purposes, if the facts were so
8 well-known to me or I was a part of that case that I
9 couldn't represent without jumping over the table and
10 having to be a witness. And they do come up, because
11 we're involved with so many aspects of the County as
12 civil counsel, but I can't think off the top of my head.

13 MR. RICKARD: That answered my question.
14 Thank you.

15 EXAMINATION

16 BY MS. KINGSLEY:

17 Q I have a question.

18 A Yes, ma'am.

19 Q And I don't know if it's appropriate for you
20 or not, being a layperson. But if the proceeding
21 hearing had gone ahead, had gone forward, would the
22 County Manager be able to override the DA's decision and
23 reinstate the employee?

24 A If the hearing -- see, I don't know. I don't
25 know the answer to that.

1 Q Okay. So there's no ruling that, like, was
2 that the County Manager has authority over the DA in a
3 case like this, or in any case, because I'm just trying
4 to understand that --

5 (Simultaneous speakers.)

6 A The statute I think I would start with is the
7 NRS 252 which really address the issue of appointment of
8 deputy DAs, and that starting point of appointment, and
9 then any deputy DA that's appointed and takes the oath
10 of office, and it's at-will and serves at the pleasure
11 of the District Attorney, then they're an employee, of
12 course, and are paid by the County and work in the
13 County's buildings.

14 So the hearings, there's the NRS hearing where
15 there's a hearing before the BOCC to examine and
16 determine if the termination decision is reasonable, I
17 believe. Then under the policy and procedure, the
18 entitlement and discussion about the discipline and the
19 definition that isn't applicable said that hearing is
20 not applicable.

21 So when you look at the statute, if
22 hypothetically it was applicable where it occurs, the
23 answer to the question is, if the board was to find the
24 reasons given to not be reasonable, then what happens?
25 I don't recall if the statute addresses that. They make

1 a --

2 Q Okay. Thank you.

3 A -- determination if it was reasonable. Yes,
4 you're welcome.

5 MS. KINGSLEY: Okay. Thank you. Thank you.

6 MR. PITARO: I have a question, if I could.

7 CHAIR COOK: Does this bring out any questions
8 from, first, Mr. Pitaro?

9 FURTHER EXAMINATION

10 BY MR. PITARO:

11 Q Yes. You were asked and talked about the
12 POOL/PACT and when the (inaudible) and you testified
13 that in cases that you would call and notify the
14 POOL/PACT of the situation if you thought there was a
15 potential conflict?

16 A Correct. Correct.

17 Q When you gave Mr. Arabia your advice on the
18 Kabell request for a hearing, did you think that that
19 was a conflict?

20 A No.

21 Q And did you think that you should have called
22 the POOL/PACT and ask them to come in and handle the
23 letter?

24 A No.

25 Q And that was outside the scope of -- or that

1 decision-making process would not fall within that
2 framework of the POOL/PACT?

3 **A Correct. I did not think it did.**

4 CHAIR COOK: The screen kind of jumped on
5 Mr. Pitaro there. I don't know if you're done or not.

6 MR. PITARO: Yes, I am.

7 CHAIR COOK: Okay. The State Bar can follow
8 up, please.

9 MS. FLOCCHINI: I have no further questions
10 for Ms. Zlotek.

11 **THE WITNESS: Thank you.**

12 CHAIR COOK: Then, Ms. Zlotek, thank you for
13 coming in and testifying, and we can move on to the next
14 witness.

15 **THE WITNESS: Thank you, sir. Thank you.**

16 CHAIR COOK: Thank you.

17 **THE WITNESS: Okay. Just give me a minute to**
18 **beam out.**

19 (The witness was excused and left the
20 stand.)

21 MR. PITARO: Can we take five?

22 CHAIR COOK: Go ahead.

23 (Recess taken.)

24 CHAIR COOK: It looks like we're all back.
25 Are we ready to proceed?

1 MR. PITARO: Yes.

2 CHAIR COOK: Mr. Pitaro, your next witness.

3 MR. PITARO: Mr. Arabia. I know he was sworn
4 in previous.

5 MR. ARABIA: I was sworn.

6 MR. PITARO: Do you want him re-sworn or not?

7 CHAIR COOK: No. This is the reminder you're
8 still under oath. Please proceed.

9 (Witness sworn.)

10 CHRISTOPHER R. ARABIA, ESQ.,

11 having been previously sworn, was

12 examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. PITARO:

15 Q Mr. Arabia, I want you to tell this Panel if
16 you sent -- well, tell why you sent the letter to HR
17 telling them to cancel the hearing.

18 A Well, it was simple. After conferring with my
19 deputies, we had determined that it was -- involves an
20 inappropriate hearing, and it was really that simple. I
21 think that Mr. Richardson and Ms. Zlotek elaborated on
22 the reasons, which I'm happy to do if anyone wants, but
23 I think the reasons were pretty clear.

24 And it was not -- there's a process for a
25 disaffected employee, and in that case, that was kind of

1 -- I don't know -- a divergence from the process, and it
2 wasn't legal, and so it was just not something that we
3 thought was appropriate.

4 Q Did you send the e-mail to HR telling them to
5 cancel the hearing so that you could advance your own
6 personal interests in blocking the review of your
7 decision that resulted in the request for the hearing?

8 A No.

9 Q Okay. Did that have anything to do with the
10 fact that you sent this request out?

11 A No.

12 Q Or this note. Once, again, was that based
13 strictly on the law as you understood it?

14 A Yes.

15 Q And do you still understand that to be the
16 proper approach?

17 A Yes.

18 Q Okay. Now, once you have done and sent that
19 letter out, and that hearing has been canceled, do you
20 have any involvement with Mr. Kabell's potential
21 litigation against the County?

22 A No. I think what happens in a situation like
23 this is, without that appeal hearing, you would assume
24 that he would move forward, as he ultimately did, and
25 that the next thing would be something that is probably

1 litigation, for example, District Court, EMRB, or even
2 sending a demand letter; and that is, in fact, what I
3 anticipated.

4 So, no, once that happened, that's when
5 someone like Ms. Bruch would come, as she did in this
6 case, and then she takes over, and I'm not part of --
7 you know, she's counsel, and I can't -- you know, she
8 decides how the case is going to get resolved or
9 whatever.

10 Q And so she's now the counsel handling that
11 portion of it?

12 A Yes.

13 Q When you send the letter or the e-mail as
14 telling them the hearing to be canceled to HR, and it's
15 canceled, then your involvement in that is done?

16 A Yes.

17 Q And then Ms. Bruch takes over for whatever
18 purpose she's there for?

19 A Yes.

20 Q Now, and you have already said that wasn't
21 done for any personal interest?

22 A Right. That's correct.

23 Q Now, the Chair has directed us to the issue
24 you said in response to his Grievance, and one thing in
25 this was Mr. Kabell's Grievance to the Bar, right?

1 **A Yes.**

2 Q Now, Mr. Kabell's Grievance to the Bar was
3 (inaudible) terminated him?

4 **A I don't remember.**

5 CHAIR COOK: Mr. Pitaro, you cut out again.
6 You've got to reask that question. I missed the whole
7 question, or at least the second half of the question.

8 MR. PITARO: That was a zinger, too. I'm
9 sorry you missed it.

10 CHAIR COOK: Yeah, I was looking forward to
11 it.

12 MR. PITARO: Okay.

13 BY MR. PITARO:

14 Q The letter that you wrote December 9th
15 (inaudible) concerning a Grievance filed by Mr. Kabell,
16 correct?

17 **A Yes.**

18 Q The Complaint we're here on is a Complaint by
19 the --

20 **A Wait. I think they have a problem.**

21 MR. PITARO: We have a problem?

22 CHAIR COOK: You cut out again at almost the
23 same part. Ms. Bywaters, can you read the part of the
24 question from the first time until it cut off to kind of
25 cue Mr. Pitaro.

1 (Record read.)

2 MR. PITARO: Could we have a minute here?

3 CHAIR COOK: Yes.

4 MS. FAUST: If I may, we could also have you
5 call in, like we did for Ms. Kingsley, and so that way
6 you have the audio on the telephone and the video of
7 you. I don't know if that will help at all.

8 MS. STRAND: That might be wise, Kristi,
9 because I think we're having Internet problems. And,
10 unfortunately, we don't have the cable to hard wire the
11 laptop.

12 MS. FAUST: Yeah.

13 MS. STRAND: Just post the phone number in
14 chat, and I'll add us onto my cell phone.

15 MS. FAUST: It's actually already there
16 from -- let's see it's a message from me to everyone at
17 10:08. It's got the meeting ID and two toll-free
18 numbers.

19 MS. STRAND: Thank you.

20 MS. FAUST: You're welcome.

21 (Pause in proceedings.)

22 MS. FAUST: Can you hear me on your phone,
23 Emily?

24 MS. STRAND: Yes, I can hear you on my phone.
25 Give me just one second, and we'll get back to where we

1 need to be.

2 MS. FAUST: Okay. I just wanted to remind to
3 keep the audio that's connected to your video on mute,
4 and then we'll just go through your phone.

5 (Pause in proceedings.)

6 MR. PITARO: Can you hear us?

7 CHAIR COOK: Yes, let's go back on.

8 BY MR. PITARO:

9 Q All right. Mr. Arabia, on December 19, 2019,
10 you filed an answer to a Grievance filed by
11 Vieta-Kabell, correct?

12 A Yes.

13 Q And that was the document that was referred to
14 by the Chair, Mr. Cook, correct?

15 A Yes.

16 Q And, in that, he made mention that you said --
17 and I'm quoting now -- "the County has its own counsel
18 and it's more akin to an adverse party than a client,"
19 okay?

20 A Yes.

21 Q When you were talking about your answer, what
22 were you talking about when you made that statement?

23 A Well, a couple of things, the first is that --
24 you know, that was true at the time, and it was, as it
25 turned out, it was true as of -- I don't remember

1 exactly what the time was that Ms. Bruch testified to,
2 but it was like on September 25th.

3 And so, at that point, I assumed it was going
4 in the direction of litigation, and it could have even
5 been that, yeah, they were just going to make a demand
6 or file suit or challenge that determination in court.
7 I don't know. But what I do know is that she was, from
8 that point on, basically in control of it.

9 And the reason that I said that they were akin
10 to an adverse party is because, if there had been
11 another situation with another employee in March of 2019
12 where the employee sent an e-mail threatening to sue the
13 County, and we reported that to pool, they had Rebecca
14 Bruch get in touch with my office.

15 We had a conference call. Marla and Brad were
16 in my office with me, and we were speaking to Rebecca
17 Bruch, and about five or 10 minutes into the
18 conversation, she said, "Hold on a minute. I represent
19 the County. I don't represent you," and she intimated
20 that, potentially, our interests in, whatever the matter
21 was, were adverse.

22 And so I took that to mean that, at the point
23 in the case when she gets in there, I guess, there could
24 be the divergence that she talked about when she
25 testified, and I think that, so basically -- and the

1 reason I said akin to instead of just saying it is
2 because it's not quite the same thing.

3 But it's also true that we're not the same
4 entity at least within the narrow confines of that
5 situation. So that's how I kind of view it, and that's
6 something that was told to me by Rebecca Bruch.

7 It wasn't something that I -- you know, at the
8 time, I had only been in office two months, and, you
9 know, I didn't -- there were a lot of things I hadn't
10 been familiar with, and that was one of them. But I do
11 remember that, after the call was over, neither Brad nor
12 Marla said anything to contradict what Ms. Bruch said
13 about that, so that's what I meant by that.

14 CHAIR COOK: Now, Mr. Pitaro, I appreciate you
15 asking the question about the exhibit I was asking
16 about, but just to be specific so that I don't have to
17 go back in and ask again, I was actually talking about
18 that same e-mail, but the last paragraph above his
19 No. 4.

20 It begins: "The County was acting adversely
21 to me, and I told the County not to conduct an improper
22 hearing," and it continues from there. That's the
23 sentence I was talking about.

24 (Pause in proceedings.)

25 / / /

1 BY MR. PITARO:

2 Q Let me see it. Let me reference him. Take a
3 look at it.

4 A Okay. I've had a chance to read that, and
5 what I would say there is I'm not sure that some of the
6 words that I chose were as clear as they could have
7 been, but when I said the County, what I really meant
8 was that Danelle Shamrell and/or Tim and at the time,
9 possibly, and/or Rebecca Bruch, I didn't know -- I don't
10 think I knew exactly what the timing of her joining the
11 case was at that point.

12 But the key thing is they were doing something
13 that was improper, and it wasn't improper to me as a
14 person. It wasn't like they were coming and stealing my
15 car or something. It was improper, and it was adverse
16 to the County, actually, and that's why I told them
17 that, after conferring at length with Mr. Richardson and
18 Ms. Zlotek, I told them not to do that. It was wrong.

19 And, like I said, I guess, you know, it's not
20 as clear as it could have been, but it absolutely was
21 the right thing that I did, and it wasn't done out of a
22 personal interest. It was done out of it was right, and
23 it was proper, and it wasn't just me who felt that way.
24 It was two lawyers who I looked up to for their
25 experience and their wisdom.

1 So -- and maybe it could have been worded
2 better, but still I stand by what I did and why I did
3 it.

4 Q Let me ask you this: And, remember, the fact
5 that Mr. Kabell was not given a illegal hearing, based
6 upon the advice of the Nye County District Attorney,
7 that did not stop him from proceeding, did it?

8 A No, it didn't. He sent the County a demand
9 letter, and they eventually went down that road. They
10 could have also gone and filed suit, and they could have
11 taken it to the EMRB. Back at that time, there was a
12 Grievance from another employee, and so they had those
13 options.

14 And then, I guess, they could have gone to the
15 District Court and just said, "Hey, you know, the DA was
16 wrong about this thing. We are entitled to this
17 hearing, you know, What say you, Court?" They could
18 have done any of those things, and I never did anything
19 to stop it.

20 And, in fact, I think it's worth noting that I
21 provided a written list of reasons timely in response to
22 that other request, and I was the one who -- I wanted
23 that hearing. I was looking forward to having a chance
24 to defend my actions, because I'm limited in what I can
25 say and do, and there were a lot of people saying a lot

1 of bad things about my office and my performance as DA.

2 So having an examination of all that was fine
3 with me, and I made no effort to block the request for
4 public hearing, and, in fact, wanted it to happen
5 quickly.

6 Q So what you're telling us is that Mr. Kabell
7 had all other remedies to him save and except the one
8 that was illegal?

9 A Yes.

10 Q And that's where it was?

11 A Yes.

12 Q And you didn't declare the procedure illegal
13 based upon the fact that you wanted to hire -- you
14 wanted to hide why you had fired him?

15 A That's correct.

16 Q As a matter of fact, you were pretty open
17 about why you fired him?

18 A Well, I wanted to -- I mean, I was -- I
19 wouldn't say that I wanted to. I thought it was
20 important that -- or at least it would be -- it would
21 be, I don't know, good both for the office and for
22 everyone if we had a public hearing where, you know --
23 and the thing is, if it turns out that I was wrong, then
24 I'm going to take the hit on that. I get that. I'm
25 talking about me as the District Attorney.

1 But I thought that what I did was appropriate,
2 and I was willing to defend it, if need be, and -- but I
3 didn't think -- and, again, this is after conferring
4 with Mr. Richardson and Ms. Zlotek that, you know, it
5 was clear under the law that that one particular thing,
6 that hearing, was not appropriate under Nevada law.

7 Q And under the other hearing that we have been
8 discussing here is that you did give the reasons and
9 made them public?

10 A Yes.

11 Q And --

12 A I don't know if I made them public or not,
13 really, but I guess so. But I mean I -- the statute
14 says give the person his reasons, and I did that.

15 Q You did that, and then once you did that, then
16 Mr. Kabell and everyone followed with that hearing?

17 A That's -- yes.

18 Q All right. Anything else?

19 A (Moves head side to side.)

20 MR. PITARO: I have nothing further. Thank
21 you.

22 CHAIR COOK: Thank you. Bar Counsel?

23 MS. FLOCCHINI: Thank you.

24 / / /

25 / / /

1 CROSS-EXAMINATION

2 BY MS. FLOCCHINI:

3 Q Mr. Arabia, am I pronouncing that properly?

4 A Yes. Thank you for asking.

5 Q Okay.

6 A It's pronounced Arabia, and it's in Italian,
7 and most people say Arabia, so either one is fine with
8 me, but thank you.

9 Q Got it. Okay. Thank you. You testified
10 that, once Ms. Bruch became involved, you didn't advise
11 the County any longer on any of the issues that
12 Mr. Vieta-Kabell raised, correct?

13 A Yes.

14 Q Okay. And we know that the hearing was set
15 for October 9th, 2019, right?

16 A Yes.

17 Q Why didn't you wait for Ms. Bruch to become
18 involved before advising about terminating -- about the
19 vacation of the appeal hearing?

20 A Because I don't think at that time there was
21 anything that would trigger her involvement. In other
22 words, it's, to me, my understanding of a claim is when
23 there's a threat of litigation, and I think we might
24 have discussed this this morning. But what he was
25 asking for was to have a hearing in front of the HR

1 Director and the County Manager, and I didn't see that
2 as something that required her involvement.

3 And then -- and, as I said, there's a process,
4 and that was a deviation from an appropriate process.
5 And so we analyzed it, and we concluded that it was
6 clearly improper and illegal. And once we pushed the
7 thing back onto the track, I anticipated that it was
8 going to go in the direction of litigation and that
9 Ms. Bruch would get involved, and that did actually
10 happen.

11 I'm not privy to what, if any, communication
12 there was between the County Manager and the HR Director
13 and Mr. Vieta-Kabell during that period, but I do know
14 that Ms. Bruch was on the case, I think the next day, so
15 something was happening. And that's kind of how I
16 anticipated it would go, but that's why.

17 Q So you anticipated that, after the appeal
18 hearing was vacated, there would be litigation, but you
19 didn't view the appeal hearing as litigation. Is that
20 fair?

21 A Actually, I think that I misspoke. To be
22 honest with you, when I say I anticipated that, that
23 might be me thinking with the benefit of hindsight.
24 What I remember is that we definitely analyzed the thing
25 about the hearing. I think that we did like a chart

1 that Ms. Zlotek drew and tried -- I think that we
2 thought it might go in that direction, yes. So maybe I
3 should withdraw my -- withdraw what I said. I
4 apologize.

5 I think that we saw that that was a
6 possibility definitely and that -- but, still, it could
7 have been that, you know, he -- again, it would have
8 been impossible to say with any complete certainty,
9 because he could have said, "You know what, I'm just
10 going to forget about this and walk away," and so it
11 really, to me, it would require the next step for it to
12 go to litigation. At least that's how I saw it.

13 Q Okay. Mr. Arabia, when did Nick Crosby become
14 your counsel with respect to issues regarding
15 Mr. Vieta-Kabell?

16 A I'm not sure that he ever did, because my
17 recollection is very similar to Ms. Bruch's
18 recollection, which is that the request was made for the
19 hearing, and I remember that, for various reasons, yeah,
20 people's schedules and whatnot, there was talk about --
21 I think this was in November -- there was talk about
22 doing it in the middle of January or something like
23 that, and I wanted to do it sooner. That's how I
24 remember.

25 And then, I think, Becky -- or, excuse me --

1 Ms. Bruch said something about maybe Nick Crosby can get
2 involved, and then I don't remember whether he got
3 formally involved, to be honest, and I do know that it
4 kind of fizzled. That was more on Mr. Vieta-Kabell's
5 side of it than mine, and so it never happened. So I'm
6 not 100 percent sure if and when that actually -- if he
7 ever got officially involved.

8 Q Did Mr. Crosby ever advise you with respect to
9 issues regarding Mr. Vieta-Kabell?

10 A I'm not 100 percent sure, and the reason is
11 because I talked to him on occasion about there's an
12 EMRB thing that's pending, and it -- so it could have
13 come up, because he was one of the people in the EMRB
14 case for a while, but I don't think that he was ever
15 officially retained or appointed other than --

16 So, yes, with Mr. Vieta-Kabell with the EMRB
17 thing, he definitely -- he's counsel for that, and
18 Mr. Vieta-Kabell was an adverse party until some point a
19 couple months ago in that particular matter. But as far
20 as the separate thing where Ms. Bruch was representing
21 the County with respect to Mr. Vieta-Kabell, I don't
22 think that Mr. Crosby was appointed to that matter.

23 Q Did Mr. Crosby represent you in other
24 employment-related matters?

25 A Well, yes, the original EMRB matter, he came

1 in and represented us.

2 Q When you say "us," did he represent you as the
3 District Attorney?

4 A In the EMRB matter, I think he actually
5 represents the County. But we kind of or, like, I don't
6 know. I think the action is against the County, so when
7 I say represents "us," I guess he represents the County.
8 But, obviously, I was involved in that, and so, you
9 know, I worked with him on that matter.

10 MS. FAUST: Excuse me just a moment. Kait, it
11 looks like we lost Ms. Kingsley's telephone, and so I
12 don't know if she heard any of that last portion.

13 MS. FLOCCHINI: Ms. Kingsley, did you hear the
14 last couple of questions? You can give us a thumbs up
15 if you heard us.

16 MS. FAUST: There she is. I'm going to let
17 her phone back in here, and we can find out.

18 MS. FLOCCHINI: Can you hear us?

19 MS. KINGSLEY: Yes, now I can, yes.

20 MS. FLOCCHINI: Did you hear that last set of
21 questions?

22 MS. KINGSLEY: I didn't hear for like the last
23 minute.

24 MS. FLOCCHINI: Okay.

25 MS. KINGSLEY: My phone died on -- you know,

1 and I just got back on.

2 MS. FLOCCHINI: The perils of technology, I
3 understand.

4 MR. PITARO: Can you do a readback?

5 MS. KINGSLEY: Okay.

6 MS. FLOCCHINI: Chair Cook, I don't know if
7 you want Ms. Bywaters to read it back, you want me to
8 paraphrase? I'm not sure we need to.

9 CHAIR COOK: I would prefer if you
10 paraphrased. If Ms. Strand or Mr. Pitaro have an issue
11 with the way you phrased it, we'll let them address
12 that.

13 MS. FLOCCHINI: Okay. Ms. Kingsley, I asked
14 Mr. Arabia if Mr. Crosby had represented him in other
15 employment matters, and he referenced the EMRB -- I
16 think is the initials -- matter and that Mr. Crosby
17 represented either the County or him. He wasn't clear,
18 but he knew that he had worked with Mr. Crosby on that
19 matter.

20 MS. KINGSLEY: I heard that, yeah.

21 MS. FLOCCHINI: Is that fair, Mr. Pitaro?

22 MR. PITARO: Yes.

23 MS. KINGSLEY: Yeah. Thank you.

24 CHAIR COOK: Please proceed.

25 MS. FLOCCHINI: Thank you.

1 Thank you for the indulgence while I looked
2 over my notes. I don't have any further questions at
3 this time.

4 CHAIR COOK: Mr. Pitaro, please.

5 MR. PITARO: Yes, if I may.

6 REDIRECT EXAMINATION

7 BY MR. PITARO:

8 Q Mr. Arabia, we were talking about the other
9 matter with -- and she mentioned Mr. Crosby and then
10 Ms. Bruch. Those are the matters that we have said,
11 when she was testifying, were totally different than the
12 matter before this hearing panel, correct?

13 A **That's my understanding, yes.**

14 Q And so the fact of the matter is that your
15 decision to advise the County not to hold the Kabell
16 hearing was based upon the research and law you did
17 there, correct?

18 A **In cooperation with my deputies, yes.**

19 Q But the items we were talking about where
20 Ms. Bruch came in and then the mention of Mr. Crosby, as
21 well as the other matter, that had nothing to do with
22 this?

23 A **That's right.**

24 Q Even though Mr. Kabell is opponent personnel?

25 A **Yes.**

1 Q And when you say that you're not representing
2 the County on those things, that's because Ms. Bruch is?

3 A Right. Why Mr. Crosby --

4 (Simultaneous speakers.)

5 MR. PITARO: Okay. All right. That's all
6 I -- nothing further.

7 CHAIR COOK: Ms. Kingsley, do you have any
8 follow-up?

9 MS. KINGSLEY: No, no.

10 CHAIR COOK: Or Mr. Rickard?

11 EXAMINATION

12 BY MR. RICKARD:

13 Q Mr. Arabia, real quickly, when you were -- I
14 think the term is -- analyzing the HR hearing with
15 Ms. Zlotek and Mr. Richardson, did you guys discuss what
16 you anticipated would happen at that HR hearing, if it
17 went forward?

18 A I'm not 100 percent sure. I think that we
19 discussed that it might end up in court, and I don't
20 remember -- we probably did. I don't have any specific
21 memory of like how that hearing would be set up, but
22 it's possible. I wouldn't -- I can't rule that out.

23 I'm trying to -- the main focus was on,
24 actually was on, what was going to happen down the road
25 in the sense of, you know, could this potentially lead

1 to litigation, because I think we were thinking in those
2 terms. I don't -- I don't remember for sure. And, I'm
3 sorry, I can't rule it out, but I can't say that it
4 definitely happened. I wouldn't be surprised either
5 way.

6 MR. RICKARD: No further questions.

7 EXAMINATION

8 BY CHAIR COOK:

9 Q I've got one or so, Mr. Arabia. Exhibit 5 is
10 the September 24th, 2019, e-mail that you sent to
11 Danelle that says: "It is my (inaudible) as the Nye
12 County District Attorney that you must cease and desist
13 from conducting the proposed hearing," and the e-mail
14 continues from there.

15 That is the contemporaneous document that
16 expresses what you were doing as opposed to where we had
17 that -- or you had that colloquy with your counsel that
18 which you meant when you were saying you were acting or
19 the County was acting adversely to you.

20 Can we rely on the contemporaneous
21 September 24th e-mail when you advised you were doing it
22 in this capacity as the Nye County District Attorney in
23 conveying your legal opinion to that panel? Can we rely
24 on that as being accurate?

25 A There was a part of the question that kind of

1 dropped out, so I'm going to paraphrase what I think
2 you're asking, and if I'm -- if that's okay with you,
3 I'm sorry.

4 Q Let me just do it better, because I want to
5 make sure we have a clean record. I'm just trying to
6 find out, can we rely as the most accurate version of
7 what you were doing to be the contemporaneous e-mail,
8 the September 24th one that's Exhibit 5 in the record?

9 A Yes.

10 Q And you're not walking back from the language
11 in that through the rest of this testimony, right?

12 A That's correct.

13 CHAIR COOK: I don't have anything else.

14 Does that create some more questions for you,
15 Mr. Pitaro?

16 MR. PITARO: No, sir.

17 CHAIR COOK: Bar Counsel?

18 MS. FLOCCHINI: No, thank you.

19 CHAIR COOK: Okay. We are done with this
20 witness. Mr. Pitaro, Ms. Strand, next?

21 MR. PITARO: We have no further witnesses.
22 Thank you.

23 RESPONDENT RESTS

24 CHAIR COOK: Okay. Do either of you need us
25 to take 10 minutes so you can prepare to condense your

1 argument and argue, or are you both ready to go back to
2 back now?

3 MS. FLOCCHINI: I would suggest that it might
4 be worth it to give maybe five minutes or so for
5 Ms. Bywaters to get ready for the soliloquy.

6 CHAIR COOK: Let's take 10 minutes. We'll
7 come back, and we'll do closings back to back, and then
8 we'll start deliberating.

9 MS. FLOCCHINI: Thank you.

10 CHAIR COOK: Thank you.

11 (Recess taken.)

12 CHAIR COOK: So let's go back on the record
13 for arguments starting with Bar Counsel.

14 MS. FLOCCHINI: I caught that before I
15 started.

16 CLOSING ARGUMENT BY MS. FLOCCHINI

17 MS. FLOCCHINI: The Supreme Court has told us
18 when they're taking into consideration whether the
19 sanctions should be issued, they consider four factors,
20 and I think those four factors give us a nice framework
21 to consider all of the evidence that you have before you
22 and to decide whether or not to issue a sanction in this
23 case.

24 Those four factors are the duty of the
25 attorney, and that duty can be to a client, to the

1 profession, to the public, to the integrity of the
2 profession, to the judiciary. And then there's a mental
3 state, the Supreme Court has told us to consider the
4 mental state of the attorney when they engage in the
5 violative conduct.

6 And then, finally, they've told us that the
7 injury or potential injury to either the client, the
8 public, the integrity of the profession should be
9 considered with the other two factors to arrive at a
10 baseline sanction, and then to use the Standards for
11 Imposing Lawyer Sanctions to determine what that
12 baseline sanction is and then to consider aggravating or
13 mitigating factors that would warrant an upward or a
14 downward deviation from that baseline sanction.

15 I'm going to use those four factors sort of to
16 condense the evidence that the Panel has heard and apply
17 the law in this closing. Rule of Professional Conduct
18 1.7 is part of the set of Rules that regulate an
19 attorney's duty of loyalty to their client. And those
20 Rules are both the conflict of interest rules and then
21 the confidentiality rules, and so this one, 1.7, is
22 square there in the middle, Obligations to Current
23 Clients.

24 And it's one of the most important duties that
25 an attorney has to their client. And, in this case,

1 Mr. Arabia's client is the people of Nye County. He's
2 representing the County. The people elected him to
3 represent them and to work on their behalf.

4 I want to draw attention specifically to what
5 the ABA Model Rule of Professional Conduct 1.7, what
6 they've said in their comments, and I'm looking at the
7 Ninth Edition, page 139, and I'm looking at the second
8 comment to RPC 1.7.

9 And in analyzing the conflict of interest, the
10 Comment advises that "Resolution of a conflict of
11 interest problem under this Rule requires the lawyer to:
12 1) clearly identify the client or clients; 2) determine
13 whether a conflict of interest exists;

14 "3) decide whether the representation may be
15 undertaken despite the existence of a conflict; and then
16 4) deal with the implied consent to proceed in spite of
17 the conflict -- or I'm sorry -- the informed consent to
18 proceed in spite of the conflict, if that's appropriate.

19 And the State Bar submits that the issue we
20 have here today was at Step 2. And the Comments also
21 provide at Comment 10 with respect to personal interest
22 conflicts that -- and I'm quoting the book -- "The
23 lawyer's own interest should not be permitted to have an
24 adverse effect on representation of a client.

25 "For example, if the probity of a lawyer's own

1 conduct in a transaction is in serious question, it may
2 be difficult or impossible for the lawyer to give a
3 client detached advice." And that's what we've got
4 here.

5 You heard testimony from Mr. Arabia that he
6 never considered who would defend the appeal hearing,
7 but he knew that separate counsel was going to be
8 involved for any subsequent issue or a dispute that
9 Mr. Vieta-Kabell would raise.

10 The only thing that he could explain for why
11 he decided to put forward this cease and desist e-mail
12 when he did was he said that he wanted to know, he
13 wanted to know now, immediately, whether or not he
14 needed to defend his decision at an appeal hearing, an
15 appeal hearing that had been set for weeks in the
16 future, and he knew that separate counsel was being
17 retained to address any subsequent issues particularly
18 with respect to this employee.

19 I think there's a failure -- we submit this
20 evidence is a failure to recognize who the client is,
21 and that there's a significant risk that this particular
22 decision, this particular advice that the County then
23 followed was a conflict of interest that violated Rule
24 of Professional Conduct 1.7.

25 I also want to point you towards the testimony

1 of Mr. Richardson where he stated that they never
2 considered alternative notice methods for having the
3 appeal hearing vacated. They didn't consider a motion
4 to dismiss. They didn't consider notifying
5 Mr. Vieta-Kabell in a group or his counsel so that he
6 could respond as to whether or not it was appropriate to
7 vacate this hearing.

8 They used -- Mr. Arabia used his position as
9 advisor to have it vacated prior to Mr. Vieta-Kabell
10 even knowing that there was an objection to the hearing
11 being held.

12 I also want to refer you to the testimony of
13 Ms. Zlotek where she testified that situations in which
14 pool counsel, an appointment of pool panel counsel,
15 would be triggered would be if the District Attorney --
16 a person in the District Attorney's Office would be a
17 witness.

18 Well, in the appeal hearing, when we're
19 deciding what the decision was whether or not the
20 decision was a valid decision, was an enforceable
21 decision, you're going to hear from someone in the
22 District Attorney's Office.

23 **A conflict also is triggered, Ms. Zlotek**
24 **testified, when an employee of the District Attorney's**
25 **Office was charged with a crime. Again, there's no**

1 question of whether or not a particular district
2 attorney employee, a particular deputy district attorney
3 would not apply the law properly and prosecute a
4 particular crime from an employee of the office, but
5 there's that significant risk.

6 That's what the Rule protects against is the
7 significant risk that there's a material limitation of
8 responsibilities because of personal interest.

9 And I submit that's why, when there's an
10 employee who has committed a crime, that a conflict
11 counsel is triggered. And, in this case, conflict
12 counsel should have been triggered, and it wasn't.
13 Mr. Arabia moved forward despite this conflict, and it's
14 a violation of the Rule of Professional Conduct.

15 I want to look at the mental state, at
16 Mr. Arabia's mental state, when he submitted this e-mail
17 to the County.

18 And my computer just told me my Internet
19 connection is unstable. Is everyone following me?

20 CHAIR COOK: I hear you fine. I'm not getting
21 any interruption.

22 MS. FLOCCHINI: Okay. I'll keep going. Raise
23 your hands if we have a problem.

24 So we're on factor two, mental state. The ABA
25 Standards for Imposing Lawyer Sanctions give us specific

1 definitions for the three types of mental state that can
2 be applied to an attorney's misconduct.

3 The first of those is negligent, and negligent
4 is, "An attorney may have a negligent mental state when
5 the attorney lacks the awareness of a substantial risk
6 that circumstances exist or that a result will follow
7 which failure is a deviation from the standard of care
8 that a reasonable lawyer would exercise in this
9 situation."

10 The second mental state is knowing. "A
11 knowing mental state exists when the attorney had the
12 conscious awareness of the nature or attendant
13 circumstances of his conduct, but did not have the
14 conscious objective or purpose to accomplish a
15 particular result."

16 And intentional is distinguished from a
17 knowing mental state in that "the attorney acts with a
18 conscious objective or purpose to accomplish a
19 particular result." The attorney knew of the
20 consequences of their misconduct and engaged in that
21 particular conduct with that consequence in mind.

22 The State Bar submits that Mr. Arabia's mental
23 state was knowing in this instance. Mr. Arabia
24 understanding the conflict of interest in giving advice
25 to the County is elemental to serving as the District

1 Attorney. It's elemental to knowing when it's
2 appropriate for you to be advising your client and when
3 it's appropriate to get outside counsel involved so as
4 to best protect your client.

5 And you heard Mr. Arabia testify that in March
6 of 2019, in a separate employment matter, Ms. Bruch
7 specifically identified to him that there was the
8 potential conflict between Mr. Arabia and the County in
9 that employment matter.

10 I submit that this shows that not only should
11 Mr. Arabia be aware of his obligations under 1.7 as the
12 District Attorney to protect against the significant
13 risk that his representation of the County would be
14 materially limited.

15 But, secondly, Ms. Bruch already identified to
16 Mr. Arabia that, when there's an employment issue, when
17 there's a problem, or when there's a question of
18 Mr. Arabia's decisions with respect to employees, that
19 creates a conflict between Mr. -- or can create a
20 conflict between Mr. Arabia and the County.

21 That's the significant risk we're talking
22 about. It was pointed out in a separate matter.
23 Mr. Arabia should have applied it in this particular
24 case. The Panel should find that his violation of Rule
25 of Professional Conduct 1.7 was a knowing violation.

1 Finally, with respect to injury, we've got
2 either an injury or a potential injury, and that injury
3 can be to the client, which would be Nye County. It can
4 be to the integrity of the profession, or it can be to
5 the public or the efficiency of the judiciary.

6 And in the particular standard that I referred
7 this Panel to for consideration of what sanction would
8 be appropriate, the Standards talk about interfering
9 with a legal proceeding being an injury that warrants
10 particular sanctions.

11 Here, we've got the potential injury to Nye
12 County if the appeal had been further pursued. If
13 Mr. Vieta-Kabell had particularly pursued damages or
14 some sort of claim because of the termination of that
15 appeal hearing, you've got an injury to the client
16 because of Mr. Arabia's failure to recognize this
17 conflict and requiring the County to act quickly on his
18 advice alone.

19 We also have that the appeal hearing was
20 interfered with. The legal proceeding did not happen,
21 because Mr. Arabia directed the Human Resources
22 Director, Ms. Shamrell, to cancel that appeal hearing.
23 So, as I reference, and I referenced it in the Hearing
24 Brief, so I'm going to look at the exhibit that we
25 provided, Exhibit B, to the Hearing Brief.

1 The State Bar submits that, when you take all
2 three of these factors, the duty violated, the mental
3 state of the attorney, and the injury that was created,
4 and you apply them to the Standards for Imposing
5 Sanctions, we get to Standard 6.22.

6 And that standard states that "suspension is
7 generally appropriate when a lawyer knows that he or she
8 is violating a court rule or order and causes injury or
9 potential injury to a client or a party or causes
10 interference and potential interference -- or potential
11 interference with a legal proceeding."

12 And so, in this case, we've got the violation
13 of Rule of Professional Conduct 1.7 that created an
14 interference with the legal proceeding and exposed the
15 client, Nye County, to potential injury.

16 Now, the State Bar submits that you should
17 also consider aggravating factors in this case and finds
18 that a suspension is still appropriate. Those factors
19 would be, one, Mr. Arabia's refusal to acknowledge the
20 wrongful nature of the conduct. Mr. Arabia has
21 consistently maintained that it was appropriate to
22 advise the County on how to respond in defense of his
23 own decision.

24 Secondly, we submit that the Panel should
25 consider Exhibit 2, which has already been preadmitted,

1 with all the other exhibits, and find that Mr. Arabia
2 has substantial experience in the practice of law, and
3 that that's a factor that would support imposition of a
4 suspension or application of Standard 6.22.

5 Now, this may be my final chance to speak with
6 you, so I want to review the sanction options that are
7 out there. The State Bar submits that application of
8 Standard 6.22 is appropriate, and that it would warrant
9 a suspension. There are three different levels of
10 suspension in Nevada.

11 The first is a suspension that's shorter than
12 six months. If there's a suspension issued that's
13 shorter than six months, an attorney returns to practice
14 without having to seek reinstatement. They are required
15 to notify clients of their suspension and to stop
16 practicing for the term of the suspension, but they are
17 not required to come before a new panel, pursuant to
18 Supreme Court Rule 116 and request reinstatement.

19 Then, there's a suspension that's six months
20 and a day. Once you are in excess of six months, you
21 must request reinstatement. That requires a petition to
22 be filed, a panel hearing to be held, and the Supreme
23 Court to ultimately decide whether or not to reinstate
24 the attorney.

25 There's a third level of suspension, and

1 that's a suspension that's greater than five years.
2 After five years, at five years and a day, in order to
3 become reinstated, an attorney would have to take the
4 bar in addition to petitioning for reinstatement and
5 going through all the other steps that a lesser
6 suspension would require.

7 We're going to defer to the Panel's discretion
8 on a term of suspension. I will tell you that the ABA
9 Standards for Imposing Lawyer Sanctions finds that
10 shorter than six months is not an effective sanction.
11 They also reference that a suspension of three years is
12 a major suspension. It is a significant term.

13 They sometimes talk about the five-year mark,
14 because there are other states where five years is a
15 disbarment standard. So those are the Comments that
16 come out of the ABA Standards for Imposing Sanctions
17 with respect to suspensions.

18 Now, if the Panel finds that Standard 6.22 is
19 appropriate in this case, but that this Panel would like
20 to recommend a lesser sanction, those sanctions can
21 include a Public Reprimand or a Letter of Reprimand.
22 That would be a downward dev -- that would be
23 application of 6.22 and a downward deviation.

24 I will also submit that a Public Reprimand or
25 a Letter of Reprimand would be consistent with

1 imposition of Standard 6.23, and 6.23, that standard
2 contemplates that the mental state of the attorney was
3 negligent in engaging in the conduct.

4 So there's both the Public Reprimand and the
5 Letter of Reprimand that are available. The Letter of
6 Reprimand is the lowest form of discipline available in
7 Nevada. They are both published, and they both come
8 with an administrative fine. A suspension also requires
9 the imposition of an administrative fine or a cost
10 associated with the hearing.

11 The Letter of Reprimand in this case also can
12 serve as an admonition in the state of Nevada. An
13 admonition is a level that is contemplated by the
14 Standards for Imposing Lawyer Sanctions. Standard 6.24
15 addresses an admonition. Nevada doesn't have something
16 that's called an admonition, but as the lowest form of
17 discipline, a Letter of Reprimand is as close as we have
18 to an admonition.

19 And so I submit that if the Panel found that
20 application of 6.24 was appropriate that the
21 recommendation should be for a Letter of Reprimand at
22 least, unless the Panel found that there needed to be an
23 upward deviation because of the aggravating factors.

24 I'm going to take this opportunity to thank
25 the Panel for their diligence in this case, their

1 patience. It's not easy to be on a Zoom hearing all
2 day. We appreciate all of your efforts and your
3 volunteer time. We hope that we have used your time as
4 efficiently as possible.

5 And then, finally, the State Bar asks the
6 Panel to find that there was a knowing violation of Rule
7 of Professional Conduct 1.7 and, more generally, Rule of
8 Professional Conduct 8.4(d), which had the potential to
9 injure Mr. Arabia's client, Nye County, and did
10 interfere with the legal proceedings that were the
11 appeal hearing;

12 And that with the application of the
13 aggravating factors of Mr. Arabia's substantial
14 experience in the practice of law and the refusal to
15 acknowledge the wrongful nature of the conduct that the
16 appropriate sanction, and that the Panel recommends to
17 the Supreme Court that a suspension be placed on
18 Mr. Arabia from the practice of law or, at the very
19 least, that there be the issuance of a Public Reprimand.
20 Thank you.

21 CHAIR COOK: Thank you. Mr. Pitaro?

22 MR. PITARO: Thank you.

23 CLOSING ARGUMENT BY MR. PITARO

24 MR. PITARO: It is clear after spending all
25 day here and hearing what has been presented, that Chris

1 Arabia is a good, competent, knowledgeable, and ethical
2 District Attorney and attorney. This case is remarkable
3 in that you have the State Bar coming in in this
4 Complaint and, in essence, trying to influence or claim
5 an influence in the manner in which a duly elected
6 officer and state governor can conduct himself.

7 As a matter of fact, State Bar Counsel is
8 talking about suspensions, which would overturn an
9 election in Nye County, because you have to be an
10 attorney to be the District Attorney. What a wonderful
11 thing. We'll overturn it. And why? What is it that
12 they say, and what is it that they've proven?

13 Well, they haven't proven anything. Here's
14 what the evidence is: The evidence is a man by the name
15 of Vieta-Kabell was a deputy district attorney in Nye
16 County, and over the course of time, his performance did
17 not live up to the standard to be a deputy district
18 attorney.

19 That matter was brought forth before
20 Mr. Arabia as well as other people in the office,
21 someone like Brad Richardson, 40-odd years of practice
22 while it came in, 25 years in that office. And you
23 heard their testimony today. It was unanimous that this
24 man, based on his conduct, should be terminated.

25 And the State Bar in this hearing basically

1 said, "Oh, we have no objection to his being terminated.
2 We have no issue with his being terminated." And so
3 what we have, then, is a man being terminated and then
4 the individual who has been terminated goes out and
5 files a appeal.

6 Now, understand what this appeal was. This
7 appeal was under a process that had never been used
8 before in a circumstance like this, based on the 25
9 years' experience of the deputy district attorney, who
10 has been there for 25 years. I think the person at the
11 Human Resources said the same thing.

12 And what it was was it was a way to get around
13 trying to be an at-will employee where you are fired,
14 and you can be fired, as we know, for no cause. Well,
15 in this case, there was a lot of cause, and that was
16 testified to by Chris and Brad and Marla and never
17 denied by the Bar Counsel.

18 Now, the issue then comes down to now we go,
19 Vieta has asked for a hearing that is illegal. It
20 doesn't mean illegal that he's going to go to prison.
21 It means that it is an improper procedure under the law
22 as set forth by the Nevada Revised Statutes as has been
23 testified to as well as the procedures out of Nye
24 County, that it wasn't entitled to that.

25 And the State Bar says, "Well, we have no

1 objection, and we have no evidence to suggest that that
2 decision, that was illegal, was wrong." And so what
3 we're left with here is the employee deserved
4 termination, and he could not use the procedure he tried
5 to do.

6 The attorney, the District Attorney, who is in
7 charge of advising the County on these matters and,
8 because it was novel, brought in the people that he
9 testified to, and he told you about the research they
10 did concerning the issues, concerning the state law,
11 county, legislative history, history in the county,
12 statewide, they all came to the same conclusion with no
13 doubt the man wasn't entitled to have the hearing
14 conducted that way.

15 And that is what Chris did when he wrote that
16 e-mail. He said, "As the District Attorney of Nye
17 County, I'm telling you, you can't do that hearing."
18 That is the responsible thing an attorney does,
19 especially a District Attorney does, to the government
20 agency to tell them they're doing something wrong, or
21 someone is attempting to do it wrong, "Don't do it."

22 And, in fact, Nye County didn't do it. And,
23 as a matter of fact, while this thing has been pending
24 all the way through, there has never been any hint by
25 anyone that that decision was wrong, or even that it was

1 a shaky decision. Everyone was clear that was the
2 decision, the proper decision.

3 Now, Bar Counsel says, "Well what if he had
4 appealed? What if he had appealed, that the County
5 could have suffered damages." Well, one, there was that
6 old saying my mother used to tell me, "If wishes were
7 horses, we would all be riders." He didn't appeal.

8 And there is nothing in front of this
9 committee that says he would have any chance of
10 appealing, being successful, because every attorney that
11 has dealt with this issue has told you what their
12 opinion is, and also the State Bar has not contested it.
13 So what has happened is the person can't appeal.

14 Now, we could think if this happened or that,
15 but it didn't happen and at no time during his
16 litigation did it happen, but did they ever assert that
17 it should happen? The County never came in and said
18 through their attorney, Ms. -- what's her name -- Bruch
19 that that was a mistake. We want to do that; we want to
20 correct it. Mr. Arabia's advice protected the County.
21 It didn't hurt it.

22 The Bar then comes in and argues, "Well, they
23 should have filed motions." What? You don't just go
24 out and file motions, because you want to file motions
25 someplace. You don't file motions with the County of an

1 HR Department. You can't file motions in a courtroom
2 without something underlying. So it's an absurdity
3 saying, "Well, you should have gone out and filed
4 motions."

5 And, as I asked Mr. Richardson, "Is the reason
6 you didn't file motions is because there aren't any to
7 file?" And he said yes. I think what we really come
8 down to is, and we have seen this, maybe all of us, at
9 some time in our practice where we filed the wrong thing
10 in the wrong court. Or we styled the thing the wrong
11 way in a court, and it's kicked back, not on merits, but
12 on the fact that we didn't follow the proper procedure.

13 And that's exactly what Mr. Arabia told the
14 County HR in that e-mail when he said, "Don't do it.
15 You're not following the proper procedure." He didn't
16 say, "There isn't another procedure that could be
17 followed." The State Bar apparently thinks there's some
18 evil intent because they didn't send -- that Chris
19 didn't send it to Mr. Kabell. Why would he send it to
20 him? He was advising his client.

21 Later, you saw in there that when he was asked
22 did he mind giving it to him, if they wanted to after,
23 apparently, a request was made well after this, he says,
24 "I don't care." But, really, that's where we're at.

25 Now, what we have here with the argument of

1 the Bar is that not only was Mr. Arabia acting
2 improperly and taking the action that he took, that
3 Mr. Richardson, of course, was acting improperly when he
4 gave the advice and concurred in the advice to terminate
5 and to send the e-mail, as well as Marla Zlotne --

6 MR. ARABIA: Zlotek --

7 MR. PITARO: -- that they must have been
8 acting with bad motive, too, because they backed it up
9 all the way, and they came in here and backed it up all
10 the way, and there's never been anything contrary that
11 they weren't 100 percent right.

12 And so we don't go out and file a bank of
13 motions, and we don't go out and do all these other
14 things when the action you took was proper under the law
15 and proper under the procedure, and when you pointed
16 out, as he was obligated to under the law, as the duly
17 elected District Attorney of Nye County, that you can't
18 do it this way.

19 And when you look at it, there was nothing,
20 nothing else that he did concerning Vieta-Kabell at all.
21 And they talked about -- what's her name -- coming in
22 with the pool. She was called in because it was an
23 insurance issue. That was the proper procedure. It
24 wasn't Chris trying to somehow inhibit what she was
25 doing.

1 She didn't testify that Mr. Arabia or anyone
2 in the District Attorney tried to impede what she was
3 doing or affected her representation. And there is no
4 nothing out there that says that anyone else did. All
5 we have is, you couldn't do it this way.

6 And there was a real reason why the District
7 Attorney's Office felt so strongly about it is that
8 because, in the office of the District Attorney, it
9 affected the classification of an employee who can
10 misstate, save and except where you have in Clark
11 County, for example, these are at-will employees.

12 And there's a lot of issues that come out at
13 conceding that issue or waiving of that issue. It would
14 be a catastrophe for a public office holder to do. And
15 Chris didn't do it, and he had the advice of some very,
16 very intelligent, very, very smart people on that.

17 And I asked Brad, I said, "Well, did you think
18 Chris did anything wrong?" This is the man who
19 dedicated, I think, nine years of his career, nine years
20 doing the ethics issues for the other attorneys in this
21 state. And whatever the ethic issue is on that
22 committee, he was ahead of them.

23 He did the seminars during this time. Those
24 of us who have been involved in those sort of things
25 with the Bar and other things know how time-consuming

1 these are and what a commitment you have to have to it.
2 And I asked him, "Did you think that what Chris did was
3 wrong by doing it?" "No." "Do you think it was
4 unethical somehow?" "No."

5 And so what do we come down with in this case?
6 When we narrowed it down in here, it came down to Chris
7 took the right action in terminating this man, based
8 upon the information that he had and the people that he
9 consulted, and he took the right actions of notifying
10 his client that the hearing that they were going to
11 conduct was improper and illegal.

12 That's what he did. He did it, as the
13 document has pointed out, when he sent it, "I am doing
14 this as the District Attorney of Nye County." That's
15 what he said then, and that's what he said now.

16 Now, during the course of this litigation is
17 that one thing gets narrowed, remember that this was a
18 complaint not by the Bar. This was a complaint by
19 Kabell, and Chris was answering that. The idea that
20 there are other actions out there with Nick Crosby and
21 these other people, there's always litigation. That
22 doesn't affect this.

23 And the State Bar concedes it doesn't do it
24 when I was asking questions about it, but when they
25 wanted to ask questions about this litigation, I guess

1 they thought it was important, but it isn't. It isn't
2 important, because this is a very narrow issue. The
3 issue was: Did you have a duty to do this?

4 And they said, "Well, you should have thought,
5 because you're so smart or because you had had, in a
6 totally unrelated matter, the fact that the Nye County
7 uses an insurance company attorneys; i.e., the POOL/PACT
8 that you should have just said, "Oh, I'm not going to do
9 my job." And, really, that's what it is.

10 Elected officials don't get the chance to say,
11 "I don't want to do what I have been elected to do."
12 There has to be a compelling reason for them not to do
13 what they are elected to do and they're statutorily
14 obligated to do.

15 This decision that he, in consultation, made
16 not to have this hearing had no affect on Nye County as
17 his client. It was of benefit to Nye County. Because,
18 if not, Nye County could have gone down the primrose
19 path on an illegal procedure that, in fact, could have
20 caused them money when it shouldn't have.

21 Now, Mr. Kabell, of course, as we know it,
22 they sort of get merged, but they're really not, what he
23 did after that with the Nye County, it went through an
24 insurance company. The POOL/PACT, which is out there,
25 you know, with all the smaller counties and

1 municipalities, is a pooling of sources; i.e., like an
2 insurance company, and they pick the attorneys.

3 Nye County didn't pick the attorney; their
4 insurance company did. But I asked all the attorneys,
5 "Have you ever had one of these before?" "No." But
6 what is it that Chris did that somehow affected his
7 personal interest? Everything he did was as the
8 District Attorney. Everything Brad Richardson did was
9 as a deputy district attorney, and Marla did was a
10 deputy district attorney.

11 You can't hear?

12 MS. FAUST: I believe we lost Ms. Kingsley
13 again.

14 (Discussion held off the stenographic
15 record.)

16 (Pause in proceedings.)

17 MS. FAUST: Can you hear us now, Ms. Kingsley?

18 MS. KINGSLEY: Yes.

19 MS. FAUST: Okay. Great.

20 CHAIR COOK: Mr. Pitaro, you can finish up
21 then, please.

22 MR. PITARO: All right. Let me just go over
23 it quickly. What I was saying was, and I don't know if
24 you picked it up, was basically the fact that everything
25 that Chris did and everything that Brad did and

1 everything that Marla was consistent with good
2 attorneys, with good research, with good looking at
3 issues, and coming to the correct conclusions.

4 And, quite truthfully, the Bar doesn't attack
5 any of the conclusions. They're just saying that you
6 should have somehow asked someone else to make it. So
7 if someone else came in and made it, everything is okay,
8 but because Chris made it as the duly elected District
9 Attorney of Nye County, the one who is legally
10 responsible to make those decisions, that that is
11 somehow an ethical violation.

12 And they say, "Well, in other employment
13 matters they have happened." Well, that's because in
14 the other employment matters where you have it with the
15 POOL/PACT is that is literally the insurance company, as
16 those of us who sometimes do insurance work or know of,
17 it is the carrier that picks the attorney, not the
18 client, because it's the carrier that's going to end up
19 paying.

20 So the idea of that is not that the carrier
21 should have come in or that Chris should have brought
22 the carrier in. Because, really, if you carry this to
23 the absurd, every decision that Chris makes raises a
24 potential conflict if, in fact, he's giving a decision
25 because of some personal interest that does not exist.

1 And when we look at 1.7, it doesn't say a
2 risk. It says there must be significant risk, a
3 significant risk of a personal interest of the lawyer.
4 There's no significant risk here to the personal
5 interest of Mr. Arabia.

6 The risk here is that, if he didn't give the
7 advice and the County went and did something illegal,
8 that could have consequences that we don't know about.
9 And it could have consequences well beyond Nye County,
10 because it affects, in fact, the status of the at will,
11 at least through the county and other counties.

12 So when we look at these things, we find that
13 the legal opinion is correct, and there is no wiggle
14 room in that legal opinion. 252 is pretty clear. The
15 codes are clear. Those who allude to what Brad
16 mentioned about Clark County, that was the fight. And
17 so what they did is they said counties over 100,000, or
18 whatever it was, so only Clark County could have it,
19 that they would no longer have at employees wills and
20 how they've organized.

21 But what we have here is good advice, and not
22 only is it good advice, it protected the client. The
23 client was not put in any sort of situation, but
24 Mr. Kabell wasn't going to go to court and overturn that
25 fact of getting that hearing, because he had no legal

1 authority to get it, and there was no one in -- there
2 was no one that was going to give it to him that anyone
3 can see.

4 There's no contrary legal opinion or any doubt
5 concerning that, and so there is nothing there in the
6 fact that Chris, once he made that decision, left it up
7 to the insurance people to handle it, and that's exactly
8 what they do.

9 If there's going to be that sort of a tort
10 claim, then the insurance company does it, because
11 that's what they pay those high premiums for with the
12 tax dollars. They don't pay the tax dollars so that
13 Chris has to do it while they're paying the insurance
14 company.

15 And so when we look at it and we go through
16 this, we see there is no conflict of interest. Really,
17 what it says is that a concurrent conflict exists if
18 there's a significant risk. The representation of one
19 or more clients will be materially limited by the
20 personal interest of the lawyer.

21 He did this as the Nye County DA. He did a
22 good job. He does a good job for them, and he does it
23 ethically, and I think this hearing shows that, and we
24 ask that the Complaint be dismissed.

25 CHAIR COOK: Thank you, sir.

1 Bar Counsel, one last time, if you would keep
2 it brief, please.

3 MS. FLOCCHINI: Yes. Absolutely. I will be
4 brief. I want to make sure that we have on the record
5 that, you know, for reference in the transcript that
6 Exhibits 1 through 9, State Bar's Exhibits 1 through 9
7 were admitted through the order after prehearing
8 conference.

9 CHAIR COOK: The order does say that, but for
10 the record, so it's in this transcript, those were
11 admitted through stipulation.

12 MS. FLOCCHINI: Thank you.

13 REBUTTAL ARGUMENT BY MS. FLOCCHINI

14 MS. FLOCCHINI: We said it before, and I'm
15 going to say it one last time. This isn't about whether
16 or not Mr. Vieta-Kabell should have been terminated.
17 The State Bar hasn't conceded that the termination was
18 appropriate or not. It's just not the issue here. But
19 the State Bar hasn't conceded that the advice about the
20 appeal hearing was appropriate. It's just not an issue
21 here. The issue is: Should the advice have even been
22 given?

23 I want you to consider Mr. Pitaro referenced
24 that Mr. Richardson and Ms. Zlotek did research and gave
25 advice to Mr. Arabia. I want the Panel to take into

1 consideration that Mr. Arabia's e-mail was sent 24 hours
2 after they had notice of the appeal hearing. That means
3 that all of the research and all of the decision-making
4 happened within 24 hours.

5 And I want you to also take into consideration
6 when you're thinking about that advice that the Panel is
7 aware of at least two other employees at the District
8 Attorney's Office who had been terminated already, and
9 that, if we're moving that quickly, there's the
10 likelihood that the advice that the research was looking
11 to confirm a particular position, not to do a thorough,
12 objective analysis.

13 But assuming that, you know, the position that
14 Mr. Arabia has taken and Mr. Pitaro has put forward,
15 that the termination was proper, that the hearing was an
16 illegal hearing, that it was inappropriate to conduct
17 the hearing, why was there a rush to have this hearing
18 vacated? Why was the demand for the cancelation made
19 within 24 hours of receiving notice and requiring that
20 the cancelation happen within 48 hours of the demand
21 being made? Why didn't the demand include opposing
22 counsel or the opposing party?

23 The State Bar submits it's because Mr. Arabia
24 wanted to know if he needed to defend his decision. He
25 saw the proceeding as adverse to him, and he wanted to

1 know if he needed to rally the troops and go to battle
2 himself. Mr. Pitaro referenced that an appeal hearing
3 like this would have affected all DAs. It would have
4 affected the authority of all DAs. There was an
5 interest in having the decision protected.

6 And we submit that the proper procedure here
7 was to identify the significant risk that advising the
8 County about what to do with the appeal hearing could be
9 materially limited by Mr. Arabia's interest in
10 protecting the DA's position, in protecting that
11 particular decision, and that the proper thing to do
12 would be to identify that risk and to defer this to
13 outside counsel.

14 Mr. Arabia's job was to protect his client,
15 Nye County, from this particular risk and his failure to
16 do so was a violation of Rule of Professional Conduct
17 1.7 and 8.4(d) and that violation warrants a sanction, a
18 recommendation by this Panel to the Supreme Court.
19 Thank you again for your time.

20 CHAIR COOK: Thank you, everybody. We are now
21 off the record.

22 (Recess taken.)

23 CHAIR COOK: All right. We're back on the
24 record on State Bar of Nevada versus Arabia, Case
25 No. 19-1383. We have deliberated. Let me go through

1 our findings. First, I want to thank, Kristi and Carla,
2 for sitting through this techno-cola, and then counsel
3 for both sides representing their position very well.

4 We went through the findings. We deliberated.
5 We have found that, first, no immunity exists. Nye
6 County District Attorney's Office is subject to
7 discipline by the State Bar of Nevada.

8 In considering our opinion, we believe that it
9 did not matter whether Mr. Arabia's opinion was correct
10 or not for purposes of this analysis. We did not
11 believe it mattered whether the termination was
12 appropriate for purposes of this analysis. We did not
13 think it mattered for purposes of culpability whether
14 Mr. Arabia had consulted with other counsel or not.
15 Although it would for purposes of knowledge, intent,
16 negligence, and things like that or it may.

17 We believed Ms. Zlotek and Mr. Richardson were
18 credible, although because of what we were previously
19 advised, the substance of their testimony did not
20 materially affect our decision. Similarly, we found
21 Ms. Bruch's testimony was credible, but none of our
22 ultimate decisions substantively relied on her
23 testimony, either. We found Mr. Arabia's testimony
24 neutral and relied primarily on the documentary evidence
25 for purposes of this decision.

1 With regard to whether or not there was a
2 violation of 1.7 and/or 8.4(d), we were 2-to-1 in a
3 finding that a violation of both did exist. And, again,
4 that is based primarily on the written exhibits. We
5 found that a duty exists in conducting our punishment
6 analysis. These decisions were 3-0. Mental state would
7 have been negligent. We found that a violation would
8 have affected the legal proceedings and the
9 representation of the County.

10 For purposes of aggravating factors, we found
11 the failure to accept wrongful conduct and substantial
12 experience in the practice of law as being aggravating
13 factors, and no prior discipline as being a mitigating
14 factor. And the punishment we have ruled as appropriate
15 is a Public Reprimand, and so our order would be for a
16 Public Reprimand.

17 I think I also have to do a costs order, but I
18 don't remember the details of that, the actual costs,
19 and there's a statute that's supposed to end up or a
20 Rule that's supposed to end up in that decision that, of
21 course, we'd go with the actual cost amount and that
22 dollar amount that's in it.

23 Does anybody have any questions for us about
24 this decision?

25 MS. STRAND: Not from our side.

1 MS. FLOCCHINI: I just have a few quick
2 questions, because I'm assuming you'd like the State Bar
3 to prepare our Findings of Fact, Conclusions of Law, and
4 Recommendation?

5 CHAIR COOK: Correct.

6 MS. FLOCCHINI: Okay. And so I just want to
7 clarify which ABA Standard the Panel felt applied. My
8 impression from the violation, the mental state and the
9 injury, is that we're going -- that the Panel went to
10 6.23?

11 CHAIR COOK: Correct. Correct.

12 MS. FLOCCHINI: Okay. And those costs would
13 be the costs that are pursuant to SCR 120, which is the
14 \$1,500 administrative costs and the cost of the
15 proceeding, which is the transcript and any of our
16 mailing costs.

17 CHAIR COOK: Perfect.

18 MS. FLOCCHINI: And the State Bar will prepare
19 a memo of costs that just set forth what those are and
20 then include the recommendation for the reward of costs
21 in the full document that's a recommendation. Is that
22 acceptable?

23 CHAIR COOK: That is acceptable to me. Any
24 objection by Ms. Strand or Mr. Pitaro?

25 MS. STRAND: No.

1 CHAIR COOK: Thank you.

2 MS. FLOCCHINI: Okay. Thank you very much for
3 your time. It's been a long day. Thank you.

4 CHAIR COOK: Thank you, everybody.

5 (Reporter's Transcript of Proceedings was
6 at recessed 4:39 p.m.)

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1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss
4 COUNTY OF CLARK)

5 I, Carla N. Bywaters, a duly certified court
6 reporter licensed in and for the State of Nevada, do
7 hereby certify:

8 That I reported the taking of the foregoing
9 proceedings at the time and place aforesaid;

10 That I thereafter transcribed my shorthand notes
11 into typewriting and that the typewritten transcript of
12 said proceedings is a complete, true and accurate record
13 of testimony provided at said time to the best of my
14 ability.

15 I further certify that I am not a relative,
16 employee or independent contractor of counsel of any of
17 the parties involved in said action; nor a person
18 financially interested in the action; nor do I have any
19 other relationship with any of the parties or with
20 counsel of any of the parties involved in the action
21 that may reasonably cause my impartiality to be
22 questioned.

23 IN WITNESS WHEREOF, I have hereunto set my hand in
24 the County of Clark, State of Nevada, this 15th day of
25 September 2020.

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STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

**Christopher Arabia, ESQ.,
Nevada Bar No. 9749**

Formal Hearing
Grievance File No.: OBC19-1383

August 31, 2020 starting at 9 a.m.

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Order Appointing Hearing Panel Chair Filed May 29, 2020	SBN 014 - 015
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Order Appointing Formal Hearing Panel Filed July 9, 2020.....	SBN 023-025
Notice of Formal Hearing Filed July 28, 2020	SBN 026-028

PANEL

Marc Cook, Esq., Chair
Jason Maier, Esq.
Anne Kingsley, Laymember

Kait Flocchini, Esq
Assistant Bar Counsel

Kristi Faust
Hearing Paralegal

Thomas Pitaro, Esq.
Counsel for Respondent

Emily Strand
Counsel for Respondent

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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
12 By: Kait Flocchini
Kait Flocchini (Apr 6, 2020)

13 R. Kait Flocchini, Assistant Bar Counsel
14 Nevada Bar No. 9861
3100 W. Charleston Blvd, Suite 100
15 Las Vegas, Nevada 89102
(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:	CBJCHBCAABAA3GyqJetw1JDfhZ4oXq1znjwvEbMn21BA

"Arabia Complaint" History

-  Document created by Kristi Faust (kristif@nvbar.org)
2020-04-06 - 10:33:34 PM GMT- IP address: 68.224.138.231
-  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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Adobe Sign

Case Nos.: OBC19-1383



FILED

APR 06 2020

STATE BAR OF NEVADA
BY: *[Signature]*
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.)

DECLARATION OF MAILING

Kristi Faust, under penalty of perjury, being first and duly sworn, deposes
and says as follows:

1. That Declarant is employed with the State Bar of Nevada and, in such capacity, Affiant is Custodian of Records for the Discipline Department of the State Bar of Nevada.
2. That Declarant states that the enclosed documents are true and correct copies of the **COMPLAINT, FIRST DESIGNATION OF HEARING PANEL MEMBERS, and STATE BAR OF NEVADA'S PEREMPTORY CHALLENGES** in the matter of the *State Bar of Nevada vs. Christopher Arabia, Esq.*, Case No. OBC19-1383.

1 3. That pursuant to Supreme Court Rule 109, the Complaint, First Designation of
2 Hearing Panel Members, and State Bar of Nevada's Peremptory Challenges
3 were served on the following by placing copies in an envelope which was then
4 sealed and postage fully prepaid for regular and certified mail, and deposited
5 in the United States mail at Las Vegas, Nevada on **Friday, April 10, 2020**,
6 to:

7 Christopher Arabia, Esq.
8 c/o Thomas Pitaro, Esq.
9 601 Las Vegas Blvd. South
10 Las Vegas, Nevada 89101

11 **CERTIFIED MAIL RECEIPT 7019 1640 0000 7877 9118**

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

13 Dated this 6 day of April, 2020.

14 

15 Kristi Faust, an employee
16 of the State Bar of Nevada
17
18
19
20
21
22
23
24
25

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.

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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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 Faust, an employee
of the State Bar of Nevada

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

10 STATE BAR OF NEVADA,)

11)
12 Complainant,)

13 vs.)

14 CHRISTOPHER ARABIA, ESQ.,)
15 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 NRC
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 ///

24

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 - 6:11:38 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

JUL 10 2020

STATE BAR OF NEVADA
BY: *B. Telles*
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 (Jul9, 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)
Status:	Signed
Transaction ID:	CEJCHBCAABAAAtv0IFN3bOzpELQvoGIKQyWxzZuRDzE

"Hearing Pnl Ord_Arabia" History

-  Document created by Cathi Britz (cathib@nvbar.org)
2020-07-09 - 7:01:21 PM GMT- IP address: 71.38.29.194
-  Document emailed to Kenneth E Hogan (ken@h2legal.com) for signature
2020-07-09 - 7:02:09 PM GMT
-  Email viewed by Kenneth E Hogan (ken@h2legal.com)
2020-07-09 - 10:31:18 PM GMT- IP address: 98.180.224.237
-  Document e-signed by Kenneth E Hogan (ken@h2legal.com)
Signature Date: 2020-07-09 - 10:31:38 PM GMT - Time Source: server- IP address: 98.180.224.237
-  Signed document emailed to Kenneth E Hogan (ken@h2legal.com) and Cathi Britz (cathib@nvbar.org)
2020-07-09 - 10:31:38 PM GMT



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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

Created:	2020-07-28
By:	Kristi Faust (kristif@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZ_pyzlCzEzZ0f-Nq__fsMocDPaA_4AHD

"2020.07.28- Arabia - Notice of Formal Hearing" History

-  Document created by Kristi Faust (kristif@nvbar.org)
2020-07-28 - 4:59:21 PM GMT - IP address: 148.170.87.181
-  Document emailed to Kait Flocchini (kaitf@nvbar.org) for signature
2020-07-28 - 4:59:42 PM GMT
-  Email viewed by Kait Flocchini (kaitf@nvbar.org)
2020-07-28 - 5:04:55 PM GMT - IP address: 24.180.40.110
-  Document e-signed by Kait Flocchini (kaitf@nvbar.org)
Signature Date: 2020-07-28 - 5:05:19 PM GMT - Time Source: server - IP address: 24.180.40.110
-  Signed document emailed to Kait Flocchini (kaitf@nvbar.org) and Kristi Faust (kristif@nvbar.org)
2020-07-28 - 5:05:19 PM GMT

DECLARATION OF KRISTI FAUST

CUSTODIAN OF RECORDS

KRISTI FAUST, under penalty of perjury, being first duly sworn, declares and says as follows:

1. That Declarant is employed as a Hearing Paralegal for the Office of Bar Counsel of the State Bar of Nevada and in such capacity is the custodian of records for the State Bar of Nevada;
2. That Declarant has reviewed the State Bar of Nevada membership records regarding Respondent Christopher Arabia, Esq., Nevada Bar number 9749, and has verified that he was first licensed to practice law in the State of Nevada on May 2, 2006
3. That Declarant has reviewed the State Bar of Nevada membership records and confirmed Respondent is active.
4. That Declarant has reviewed the State Bar of Nevada discipline records regarding Respondent and has verified that he has no prior discipline.

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

Executed on this 10th day of August, 2020.



Kristi Faust
Hearing Paralegal
Office of Bar Counsel

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

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

775-482-7242 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

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 act, 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 conspicuously designated as "E-Contract intended," this email does not constitute a contract.

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

EXHIBIT

4

1/2

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

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 act, 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 conspicuously 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 transfers of data to third parties.

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

This communication is for use by the intended recipient and contains information that may be privileged, confidential or copyrighted under applicable law. Should 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.



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

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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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,

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,

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

Chris Arabia
NYE COUNTY DISTRICT ATTORNEY

CHRIS ARABIA
District Attorney



KIRK VITTO
*Chief Deputy District Attorney
Criminal Division*

MARLA ZLOTEK
*Chief Deputy District Attorney
Civil Division*

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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).

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