

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20

Electronically Filed  
Feb 05 2021 03:35 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S OPENING BRIEF**

THOMAS F. PITARO, ESQ.  
Nevada Bar No. 1332  
EMILY K. STRAND, ESQ.  
Nevada Bar No. 15339  
PITARO & FUMO  
601 Las Vegas Blvd. South  
Las Vegas, Nevada 89101  
Telephone: (702) 382-9221  
Fax: (702) 474-4210  
*Attorneys for Appellant  
Christopher Arabia, Esq.*

1                                    **APPELLANT’S NRAP 26.1 DISCLOSURE**

2            The undersigned counsel of record certifies that the following are persons  
3 and entities as described in NRAP 26.1 and must be disclosed. These  
4 representations are made in order that the judges of this court may evaluate possible  
5 disqualification or recusal.

- 6            • Appellant, Christopher Arabia, Esq.

7            Appellant Christopher Arabia, Esq. was represented in the underlying case  
8 and is represented in this Appeal by:

9            THOMAS F. PITARO, ESQ.

10           Nevada Bar No. 1332

11           EMILY K. STRAND

12           Nevada Bar No. 15339

13           PITARO & FUMO

14           601 Las Vegas Blvd. South

15           Las Vegas, Nevada 89101

16           Telephone: (702) 382-9221

17           Fax: (702) 474-4210

18           Respondent, State Bar of Nevada, is represented by:

19           Kait Flocchini, Esq.

20           State Bar of Nevada

             3100 W. Charleston Blvd., Suite 100

             Las Vegas, Nevada 89102

             Telephone: (702) 382-2200

**TABLE OF CONTENTS**

1		
2	Appellant's NRAP 26.1 Disclosure.....	i
3	Table of Contents.....	ii
4	Table of Authorities.....	iv
5	Memorandum of Points and Authorities.....	1
6	I. Jurisdictional Statement.....	1
7	II. Routing Statement Pursuant to NRAP 28(a)(5).....	1
8	III. Standard of Review.....	1
9	IV. Statement of Issues.....	3
10	V. Statement of Facts.....	3
11	VI. Statement of the Case.....	5
12	VII. Summary of the Argument.....	7
13	VIII. Legal Argument.....	8
14	A. The District Attorney of Nye County has qualified	
15	immunity for discretionary actions taken as an elected	
	official. ....	8
16	B. The State Bar of Nevada lacks jurisdiction to bring an	
17	action against attorneys for decisions made in their	
	capacity as a public official ....	11
18	C. The Disciplinary Board's Order is not supported by	
19	Sufficient evidence ....	13
20		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

D. The State Bar of Nevada had a conflict of interest  
that should have prevented it from participating in this  
case..... 14

IX. Conclusion..... 18

Verification of E. Strand..... i

Certificate of Compliance..... ii

Certificate of Service..... iv



## TABLE OF AUTHORITIES

### CASES

<i>Butler v. Poulin</i> , 500 A.2d 257, 260 n. 5 (Me. 1985) .....	ii
<i>Gruber v. Baker</i> , 20 Nev. 453, 477, 23 P. 858, 865 (1890).....	ii
<i>In Re David C.</i> , 200 Cal. Rptr. 115, 127 (Ct. App. 1984). ....	ii
<i>In re Discipline of Drakulich</i> , 111 Nev. 1556, 908 P. 2d 709 (1995) .....	ii
<i>In re Miller</i> , 87 Nev. 65, 68-69, 482 P.2d 326, 328 (1971).....	ii
<i>In re Stuhff</i> , 108 Nev. 629, 634-35, 837 P.2d 853, 856 (1992) .....	ii
<i>State Bar of Nevada v. Claiborne</i> , 104 Nev. 115, 126, 756 P.2d 464, 471 (1988) ...	i
<i>Wayment v. Holmes</i> , 112 Nev. 232, 234, 912 P.2d 816, 817 (1996).....	vii

### STATUTES

NRS § 41.032 .....	viii
NRS §281A.020(2)(a) .....	xiii
NRS §252.160 .....	xi
NRS §41.032 .....	vii
NRS §252.070 .....	xv

### RULES

Nevada Rules of Professional Conduct 1.7.....	vi
Nevada Rules of Professional Conduct 8.4.....	vii
Nevada Supreme Court Rule 105(3)(b) .....	i
Nevada Supreme Court Rule 105(2)(e) .....	ii
Nevada Supreme Court Rule 120(2).....	xviii
Nevada Rules of Appellate Procedure 17(b)(1) – (16) .....	i

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                                   **I. JURISDICTIONAL STATEMENT**

3           The instant Appeal arises from an Order of the Southern Nevada Disciplinary  
4 Board recommending the public reprimand of a licensed Nevada attorney. As such,  
5 this Court has automatic jurisdiction over the instant matter pursuant to Nevada  
6 Supreme Court Rule 105(3)(b).

7  
8                                   **II. ROUTING STATEMENT PURSUANT TO NRAP 28(a)(5)**

9           The instant case is subject to preemptive retention by the Nevada Supreme  
10 Court pursuant to SCR 105(3)(b), which provides in pertinent part that “a decision  
11 recommending a public reprimand, suspension or disbarment shall be automatically  
12 reviewed by the supreme court.” This case is not subject to presumptive assignment  
13 to the Court of Appeals. NRAP 17(b)(1) – (16).

14  
15                                   **III. STANDARD OF REVIEW**

16            “[I]n discharging its inherent authority to discipline the bar, [the Supreme  
17 Court] has the obligation to conduct an independent and *de novo* review of any  
18 record compiled in a disciplinary proceeding in order to determine whether  
19 discipline in any particular instance is warranted or whether any charge meriting  
20 discipline has been proven.” *State Bar of Nevada v. Claiborne*, 104 Nev. 115, 126,

1 756 P.2d 464, 471 (1988); *In re Miller*, 87 Nev. 65, 68-69, 482 P.2d 326, 328  
2 (1971). The Nevada Supreme Court has the “ultimate responsibility for arriving at  
3 the truth in disciplinary matters.” *Claiborne*, 104 Nev. at 126, 756 P.2d at 471.

4 “In bar disciplinary matters, a higher degree of proof is required than in  
5 ordinary civil proceedings.” *In re Discipline of Drakulich*, 111 Nev. 1556, 908 P.  
6 2d 709 (1995). Clear and convincing evidence must support any findings of  
7 misconduct. *In re Stuhff*, 108 Nev. 629, 634-35, 837 P.2d 853, 856 (1992); SCR  
8 105(2)(e). “Clear and convincing evidence” must be “satisfactory” proof that is:

9 [S]o strong and cogent as to satisfy the mind and conscience of a common  
10 man, and so to convince him that he would venture to act upon that conviction  
11 in matters of the highest concern and importance to his own interest. It need  
not possess such a degree of force as to be irresistible, but there must be  
evidence of tangible facts from which a legitimate inference ... may be drawn.

12 *Gruber v. Baker*, 20 Nev. 453, 477, 23 P. 858, 865 (1890).

13 Courts in other states have analyzed the “clear and convincing evidence”  
14 standard. In Maine, the courts have held that clear and convincing evidence is  
15 “evidence establishing every factual element to be highly probable.” *Drakulich*,  
16 *supra*, citing *Butler v. Poulin*, 500 A.2d 257, 260 n. 5 (Me. 1985). The California  
17 Court of Appeals has defined clear and convincing evidence as “evidence [which]  
18 must be so clear as to leave no substantial doubt.” *Id.*, citing *In Re David C.*, 200  
19 Cal. Rptr. 115, 127 (Ct. App. 1984).



#### IV. STATEMENT OF ISSUES

1. Whether the State Bar of Nevada, Southern Nevada Disciplinary Board's Findings of Fact, Conclusions of Law, and Recommendation (hereinafter the "Disciplinary Board's Order") should be dismissed because The District Attorney of Nye County has qualified immunity from disciplinary actions.

2. Whether the State Bar of Nevada is the proper venue to bring an action against an attorney who is also an elected public official when the conduct in question arose from his official duties.

3. Whether the Disciplinary Board's Order is supported by clear and convincing evidence.

4. Whether the State Bar of Nevada had an unwaiveable conflict of interest that should have prevented it from participating in the case against the Appellant.

## V. STATEMENT OF FACTS

The Appellant, Christopher Arabia was elected as the Nye County District Attorney in 2018 and has been serving in that elected capacity since January 9, 2019. When the Appellant first took office, he took over the management of the deputy district attorneys appointed by his predecessor. One such deputy district attorney, was Michael Vieta-Kabell, whom the Appellant terminated from the Nye County District Attorney's office on September 18, 2019.



1 On September 23, 2019, Mr. Vieta-Kabell filed an appeal of his termination  
2 with the Nye County Human Resources Department, citing a Nye County Code  
3 which provides for appeals of disciplinary actions for some county employees. *ROA*  
4 *Vol. 1, pg. 165*. On September 24, 2019, the Nye County Human Resources Director  
5 notified Kabell, the Appellant, and the Nye County Manager via email that an  
6 appeal hearing had been scheduled for October 9, 2019. *ROA Vol. 1, pg. 167*.  
7 Immediately upon hearing of the meeting, the Appellant reached out to Chief  
8 Deputy District Attorney Marla Zlotek and Deputy District Attorney Bradley  
9 Richardson. *ROA Vol. 1 pg, 493*. After consulting with the senior deputies and  
10 researching the issues, the Appellant emailed the Nye County Human Resources  
11 Director and the Nye County Manager, stating:

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

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

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

On September 25, 2019, the Nye County Human Resources Director emailed Kabell, his counsel, the Nye County Manager, and the Appellant to inform them that she had been instructed by the Appellant to ‘cease and desist from conducting the requested hearing’ and stating that there would not be a hearing on Kabell’s appeal. *ROA Vol. 1, pg. 172.* On October 20, 2019, Kabell filed a bar grievance against the Appellant. *ROA Vol. 1, pg. 151.*

## VI. STATEMENT OF THE CASE

On April 6, 2020, the State Bar of Nevada filed a complaint against the Appellant alleging violations of Nevada Rules of Professional Conduct 1.7 and 8.4. *ROA Vol. 1, pg. 120.*

Specifically, the State Bar alleged that there was “a significant risk” that the Appellant’s advice to the Nye County Human Resources Director in his capacity as District Attorney was materially limited by his own personal interest in defending his termination of a former employee. *ROA Vol. 1, pg. 123*. Thus, the State Bar alleged that the Appellant violated RPC 1.7 Conflict of Interest: Current Clients by not informing the Nye Country Human Resources Director of the alleged



1 concurrent conflict of interest and obtaining informed written consent to proceed  
2 with advising the County. *Id.*

3 In their second claim, the State Bar alleged that the Respondent violated RPC  
4 8.4 by using his position as an advisor to Nye County to improperly influence  
5 whether an employee he'd previously terminated received an appeal hearing thus,  
6 engaging in conduct that is prejudicial to the administration of justice. *Id.*

7 On April 24, 2020, the Appellant filed a Motion for Summary Judgment. On  
8 May 14, 2020 the Southern Panel Chair, in deciding the motion for summary  
9 judgement, determined that NRS 41.032 does not provide Respondent immunity  
10 from disciplinary proceedings. *ROA Vol. 1, pg. 45.*

11 On August 31, 2020, this case was presented to a formal hearing panel. As  
12 part of the findings of fact, the Panel Chair determined that NRS 41.032 does not  
13 provide Respondent immunity from prosecution by the State Bar of Nevada and/or  
14 discipline issued by the Nevada Supreme Court. *ROA Vol. 1, pg. 385.*

15 The Panel ultimately concluded, in a two to one vote, there was clear and  
16 convincing evidence that Respondent violated RPC 1.7 (Conflicts of Interest:  
17 Current Clients) and RPC 8.4(d) (Misconduct). *Id.* The Panel unanimously  
18 concluded that the Respondent's mental state was negligent and that the misconduct  
19 injured the legal profession and the representation of Respondent's client, Nye  
20 County. *Id.*



1 The panel recommended that the Appellant be issued a public reprimand for  
2 violations of 1.7 (Conflicts of Interest: Current Clients) and RPC 8.4(d)  
3 (Misconduct-prejudicial to the administration of justice). *Id.*

## 4 5 **VII. SUMMARY OF THE ARGUMENT**

6 First, the Disciplinary Board's Order must be dismissed because as the duly  
7 elected District Attorney of Nye County, the Appellant has qualified immunity  
8 pursuant to Nev. Rev. Stat. § 41.032.

9 Second, the Disciplinary Board's Order must be dismissed because the State  
10 Bar of Nevada is not the proper venue to bring an action against an elected official  
11 when the conduct in question arose from official duties. Such disputes are governed  
12 by the Nevada Ethics Commission.

13 Third, the Disciplinary Board's Order must be overturned because it is not  
14 supported by clear and convincing evidence. The Appellant did not have a conflict  
15 of interest because there was only one potential outcome when Mr. Vieta-Kabell  
16 requested a hearing: pursuant to law the hearing was improper and that fact did not  
17 change regardless of which attorney's advice the county relied upon. Thus there  
18 was no violation of RPC 1.7. Similarly, the Appellant was not the one who actually  
19 cancelled the hearing in this case and therefore did not violate RPC 8.4.

1 Fourth, the State Bar of Nevada had an unwaiveable conflict of interest  
2 because they had hired two former employees of the Nye County District Attorney's  
3 office whose employment the Appellant had terminated, including the complaining  
4 witness in the instant case. Their failure to recuse themselves and appoint an  
5 independent bar counsel prejudiced the discovery and negotiation process and  
6 ultimately the hearing. As such, the Board's Order must be overturned.

## 7 8 **VIII. LEGAL ARGUMENT**

### 9 A. The District Attorney of Nye County has qualified immunity for 10 discretionary actions taken as an elected official.

11 Appellant first argues that the Disciplinary Board's Order should be  
12 dismissed because the Hearing Panel Chairman erroneously concluded that Nev.  
13 Rev. Stat. § 41.032 does not apply to State Bar disciplinary matters.

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

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

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

11        More important in relation to the instant matter is that the *Wayment* Court  
12 held that the supervisor that ordered the termination was immune because it was  
13 within the discretion of the district attorney to fire at-will employees. Therefore,  
14 because the supervisor was not acting in his individual capacity, due to the fact that  
15 the termination was undertaken pursuant to his duties, he was immune from  
16 liability.

17        In the present case, the disciplinary complaint in question arose from the  
18 Appellant's duties as a District Attorney. Specifically, under NRS 252.160, the  
19 Appellant, in his capacity as District Attorney for Nye County, had an ethical and  
20 statutory duty to provide legal advice to Nye County and its administrators. Here,



1 he advised the county as to how to respond to a hearing request from an employee  
2 who had been terminated. In doing so, he relied heavily on not only his own  
3 knowledge but also the recommendations of two other senior Deputy District  
4 Attorneys. Because District Attorney Arabia's advice was given during the  
5 performance of his statutorily obligated duties, he should have been immune from  
6 any action based on his advice, as he had immunity pursuant to NRS § 41.032.

7 Not only do the Nevada Supreme Court Rules and the State Bar Rules of  
8 Disciplinary Procedure repeatedly refer to State Bar matters as "actions", but a State  
9 Bar Disciplinary proceeding has all the hallmarks of a traditional civil case,  
10 including a complaint and answer; a period for discovery; an evidentiary hearing;  
11 and ultimately an enforceable decision. Moreover, State Bar matters qualify as  
12 actions pursuant to Black's Law Dictionary, which defines a legal action as a  
13 "lawful pursuit for justice or decision under the law, typically leading to  
14 proceedings with the jurisdiction's court system."

15 Therefore, the complaint which gave rise to the present case should have  
16 fallen under NRS § 41.032 and the Appellant should have been immune from suit.  
17 Therefore, the Hearing Panel erred in their decision that NRS § 41.032 did not  
18 apply to State Bar Disciplinary Matters.

1       B. The State Bar of Nevada lacks jurisdiction to bring an action against an  
2       elected public official because NRS §281A.020(2)(a) created the  
3       Commission on Ethics for that purpose.

4       The State Bar of Nevada lacks subject matter jurisdiction over this matter  
5 because the actions which gave rise to the ethics complaint arose out of the  
6 Appellant's discretionary decisions as an elected official for Nye County, not his  
7 private decisions as an attorney.

8       Upholding the Disciplinary Findings in the present case would essentially  
9 give the State Bar power to override the decisions of elected officials and to  
10 interfere with the duties of any elected attorney who is a member of the State Bar.  
11 Such action would undoubtedly have a chilling effect, both on lawyers who seek  
12 elected office, but also on lawyers who currently hold office. A decision in favor of  
13 the State Bar in the present case would give the State Bar the power to impose  
14 penalties on an elected attorney whenever State Bar officials disagree with the  
15 decision of a lawyer holding public office. This possibility poses the very real threat  
16 that current officeholders might refrain from performing their duties to the best of  
17 their abilities for fear of "rocking the boat." Any action taken by an elected attorney,  
18 whether it be to file charges in a case, support a bill in the legislature, or make a  
19 statement to the press could be construed as something an official did due to a  
20 personal interest such as avoiding bad publicity or pleasing a certain portion of the



1 electorate. Such a precedent would affect not only district attorneys, but also judges,  
2 the Attorney General, state representatives, and even state senators.

3 That is not to say that public officials are free from any disciplinary restraints  
4 with regard to their discretionary decisions when carrying out their duties. On the  
5 contrary NRS §281A.020(2)(a) created the State of Nevada Commission on Ethics  
6 to investigate potential for conflicts of interest for state officials. The Commission  
7 is charged with disciplining state officials for violations that arise and occur out of  
8 their official duties by interpreting and enforcing the provisions of the Ethics in  
9 Government Law set forth in NRS Chapter 281A.<sup>1</sup> That section of the NRS  
10 establishes the public policy and standards of conduct necessary to ensure the  
11 integrity and impartiality of government, free from conflicts of interest between  
12 public duties and private interests of state and local public officers and employees.<sup>2</sup>

13 Appellant filed a Motion to Disqualify the State Bar from proceeding with  
14 the disciplinary proceeding in this case on August 5, 2020, raising the issues  
15 discussed supra. *ROA Vol. 1, pg. 328*. The Hearing Panel chair erroneously denied  
16 that Motion and held that the State Bar had jurisdiction to proceed with the case.  
17 *ROA Vol. 1, pg. 364*. Based on the foregoing, it is clear that the State Bar was not

18  
19  
20 <sup>1</sup> See Nev. Rev. Stat. §281A.280.

<sup>2</sup> See The State of Nevada Commission on Ethics, *About NCOE*, available at <http://ethics.nv.gov/About/NCOE/>, last accessed 8/2/2020.



1 the proper authority to police the actions of elected officials and therefore the instant  
2 case should be dismissed.

3  
4 C. The Disciplinary Board's Order is not supported by sufficient evidence.

5 As discussed supra, the Appellant has a statutory duty to provide legal advice  
6 to administrators in Nye County. In the present case, he advised the county as to the  
7 legal requirements (or lack thereof) of holding a hearing for a particular employee,  
8 as is his duty. The State Bar argued that in doing so the Appellant violated ethical  
9 rules because his representation of the county was materially limited by his personal  
10 interest, namely that he was the one who terminated the disgruntled employee's  
11 employment. However, by its very nature, a conflict of interest implies that the  
12 person has some stake in the outcome of a matter. Here, the Appellant had nothing  
13 to lose/gain in advising the county whether the hearing was legally proper.  
14 Regardless of who advised the county regarding the hearing, the outcome would  
15 have been the same because the case law is clear that at-will employees are not  
16 entitled to termination hearings.<sup>3</sup> Since the Appellant had no stake in the outcome

17  
18  
19 <sup>3</sup> Any other decision would effectively give the county manager the power to re-  
20 appoint former Deputy District Attorneys who had been terminated, a ludicrous  
outcome given that the power to appoint deputy district attorneys is reserved to the  
District Attorney him/herself pursuant to statute. *See* NRS 252.070.

1 of the decision to have a hearing, the Appellant could not have had a conflict of  
2 interest. As such, the Appellants actions clearly did not violate RPC 1.7.

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

14 D. The State Bar of Nevada has a conflict of interest that should have  
15 prevented them from participating in this case.

16 During the pre-hearing litigation for this case, it came to the attention of  
17 Counsel for the Appellant that there appeared to be a pattern of former Nye County  
18 District Attorneys being hired by the State Bar of Nevada.

19 Specifically, and most concerningly, following the Appellant's decision to  
20 terminate Mr. Vieta-Kabell's employment with the Nye County District Attorney's



1 office on September 18, 2019, Mr. Vieta-Kabell was almost immediately hired by  
2 the State Bar of Nevada. Moreover, it was during the time that he worked for the  
3 State Bar that Mr. Vieta-Kabell filed the grievance against the Appellant that was  
4 the basis for the bar complaint at issue.

5 However, in addition to hiring Mr. Vieta-Kabell, the State Bar of Nevada also  
6 hired two other former Nye County District Attorney who was terminated by the  
7 Appellant during the time period: former Deputy District Attorney Daniel Young  
8 and former Deputy District Attorney Gerrard Gosioco.

9 At the time the State Bar hired Mr. Young, he had a pending bar complaint  
10 from his time at the Nye County DA's office. Shockingly, the State Bar did not  
11 recuse themselves from Mr. Young's case nor refer to the Board of Governors as  
12 required by Supreme Court Rule 104(3). Instead, the State Bar dismissed the  
13 complaint against Mr. Young mere weeks after hiring him. Mr. Young left the Nye  
14 District Attorney's Office on January 2, 2020 and was working at the State Bar as  
15 soon as January 28, 2020. Unsurprisingly, the complaint against Mr. Young was  
16 dismissed mere weeks after he began working at the State Bar on February 5, 2020.

17 Counsel for the Appellant brought this incident and the State Bar's pattern of  
18 hiring former Nye County District Attorney's to the attention of the Chairman in a  
19 Motion to Disqualify the State Bar. *ROA Vol. 1, pg. 328*. In that motion, the Defense  
20 argued that pursuant to RPC 1.7 both Mr. Vieta-Kabell and Mr. Young would be



1 prohibited from representing the State Bar of Nevada in their case against District  
2 Attorney Arabia based on the fact that they were each terminated by the Appellant.<sup>4</sup>  
3 Moreover, Counsel pointed out that as the complainant in the Appellant's bar  
4 matter, Mr. Vieta-Kabell had a conflict of interest because he was a potential  
5 witness in the matter.

6 Due to the fact that Mr. Vieta-Kabell and Mr. Young have conflicts which  
7 preclude them from taking the instant case, no one else at the State Bar should be  
8 taken the Appellant's case either. There is a significant risk that whichever bar  
9 counsel is appointed to this case will be materially limited by their personal  
10 relationship with one or more of the attorneys that District Arabia terminated. In  
11 short, there are simply too many people at the State Bar who have been involved  
12 either personally or professionally with either District Attorney Arabia, Mr. Vieta-  
13 Kabell, or Mr. Young.

14 Even if the State Bar had assigned the Appellants case to a Bar Counsel who  
15 did not personally know one of the Appellant's former Deputies, pursuant to RPC  
16 1.10, the conflict of the former deputies would still be imputed to the entire State  
17 Bar. This is not the sort of matter where the attorneys could be timely screened from  
18 the matter. Just knowing that Mr. Vieta-Kabell and Mr. Young were hired by the

---

19  
20 <sup>4</sup> Mr. Goscio would also have been disqualified from representing the State Bar in  
Mr. Arabia's case, however his employment with the bar was not known to Defense  
Counsel at the time the motion was filed.

1 same employer as Bar Counsel is likely to prejudice that attorney in favor of Mr.  
2 Vieta-Kabell. There is a significant risk that Bar Counsel gave more credence to the  
3 claims of Mr. Vieta-Kabell based on the fact that they worked for the same  
4 employer. Therefore it is unlikely that Bar Counsel was able assess the facts of the  
5 case in a dispassionate manner before proceeding to a disciplinary hearing.

6       The Nevada Supreme Court's rules ensure the fairness of State Bar Hearings  
7 and are designed to avoid the appearance of impropriety that is present in this case.  
8 Supreme Court Rule 120(2) provides for the Board of Governors to appoint an ad  
9 hoc attorney to serve in Bar Counsel's place whenever Bar Counsel is disqualified  
10 from participating in a State Bar investigation such as the present case. Given the  
11 ongoing entanglement and potential interference of State Bar employees in the  
12 present case, the Board of Governor's should have appointed an ad hoc attorney to  
13 represent the Bar in this matter. Their failure to do so prejudiced the negotiation and  
14 discovery processes and tainted the Appellants hearing. Therefore, the decision of  
15 the hearing panel should be vacated.

1 **IX. CONCLUSION**

2 Based upon the foregoing, the Findings of Fact, Conclusions of Law, and  
3 Recommendation by the Disciplinary Board should be **vacated**.

4 Dated this 5th day of February, 2020.

5 Respectfully submitted,

6 **/s/ Thomas F. Pitaro**  
7 THOMAS F. PITARO, ESQ.  
8 Nevada Bar No. 001332  
9 PITARO & FUMO, CHTD.  
601 Las Vegas Blvd. South  
Las Vegas, Nevada 89101  
Telephone: (702) 382-9221  
Fax: (702) 474-4210  
Attorney for Appellant

6 **/s/ Emily K. Strand**  
7 EMILY K. STRAND, ESQ.  
8 Nevada Bar No. 15339  
9 PITARO & FUMO, CHTD.  
601 Las Vegas Blvd. South  
Las Vegas, Nevada 89101  
Telephone: (702) 474-7554  
Fax: (702) 474-4210  
Attorney for Appellant



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0

EMILY K. STRAND, ESQ. being first duly sworn , according to law, upon  
oath deposes and says:

That she is one of the attorneys of record for CHRISTOPHER ARABIA, in the above-captioned matter; that she has read the foregoing Brief and knows the contents thereof, and that the same is true of her own knowledge, except as to those matters therein stated on information and belief, and as to those matters she believes them to be true. Further, the Appellant has authorized the law offices of Pitaro & Fumo, Chtd. to make the foregoing application for relief.

SUBSCRIBED and SWORN to before  
me this 5 day of February, 2021.

 **NOTARY PUBLIC**  
**KRISTINE TACATA**  
STATE OF NEVADA - COUNTY OF CLARK  
MY APPOINTMENT EXP. OCT. 23, 2023  
No: 03-84813-1

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20

I hereby certify that to the best of my knowledge, information, and belief, the brief is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, including NRAP 28(e), that every assertion in the briefs regarding matters in the record be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found.

///

1 I understand that I may be subject to sanctions in the event that the  
2 accompanying brief is not in conformity with the requirements of the Nevada Rules  
3 of Appellate Procedure.

4 Dated this 5th day of February, 2021.

5 Respectfully submitted,

6   
7 EMILY K. STRAND, ESQ.

8 Nevada Bar No. 15339

9 PITARO & FUMO

601 Las Vegas Blvd. South

Las Vegas, Nevada 89101

Telephone: (702) 382-9221

10 Fax: (702) 474-4210

11 Attorney for Appellant





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

SERVICE LIST

Attorney of Record	Party Represented	Method of Service
Kait Flocchini, Esq. State Bar of Nevada Office of Bar Counsel 3100 W. Charleston Boulevard, Suite 100 Las Vegas, Nevada 89102	State Bar of Nevada	Email Service; Electronic Means

  
An employee of PITARO & FUMO