

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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3 IN THE MATTER OF DISCIPLINE OF)
4 CHRISTOPHER ARABIA, ESQ., BAR NO. 9749) Case No. 82173
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9 **STATE BAR OF NEVADA’S**
10 **ANSWERING BRIEF**

15 STATE BAR OF NEVADA
16 R. Kait Flocchini, Asst. Bar Counsel
17 Nevada Bar No. 9861
18 3100 W. Charleston Blvd., Ste. 100
19 Las Vegas, Nevada 89102
20 (702)382-2200

Attorney for State Bar

Thomas F. Pitaro, Esq.
Nevada Bar No. 250
Emily K. Strand, Esq.
Nevada Bar No. 15339
PITARO & FUMO
601 Las Vegas Blvd. South
Las Vegas, NV 89101
(702) 382-9221

Attorney for Appellant

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I.

STATEMENT OF ADDITIONAL FACTS

Arabia's Statement of Facts is accurate, but it is missing relevant details. Those details include (i) some of Nye County and Arabia's customs and practices regarding advising the County on certain issues, (ii) more specifics regarding Arabia's communication with the Nye County Human Resources Director, and (iii) the specifics regarding Michael Vieta-Kabell's brief employment at the State Bar of Nevada.

First, Arabia regularly advised the Nye County Human Resources Director ("HR Director"). ROA, Vol. I, pg. 384 (Findings of Fact, Conclusions of Law, and Recommendation). Second, Nye County (or the DA's office) had policies and procedures in place to identify when the personal interest of someone in the office created a conflict that required retaining outside counsel for a particular matter. *See* ROA, Vol. II, pgs. 468-469, 516-517, and 522-527 (Transcript of Proceedings, dated August 31, 2020, hereinafter "Transcript"). Finally, Arabia knew that 'litigation' regarding the termination of Vieta-Kabell's employment would trigger appointment of outside counsel. ROA, Vol. I, pg. 384 (Findings of Fact, Conclusions of Law, and Recommendation). In fact, the County's representation in other disputes between the County and Vieta-Kabell,

1 related to his employment in Arabia's office, had been assigned to outside
2 counsel. *See* ROA, Vol. II, pgs. 436-441 (Transcript).

3 Despite Arabia's expectation that a conflict of interest would require
4 outside counsel to handle any 'litigation' regarding Vieta-Kabell's termination,
5 he personally directed the HR Director to "cease and desist" from holding the
6 appeal hearing regarding his own termination decision. ROA, Vol. II, pg. 660
7 (Transcript, Exhibit 5). Arabia sent his "cease and desist" e-mail on the same
8 day that he was informed a hearing had been set. *Id.* Arabia sent his "cease and
9 desist" email only to the HR Director and a county manager- not Vieta-Kabell
10 or his counsel. *Id.* But, when responding to the original grievance in this matter,
11 Arabia asserted that he was not advising the HR Director in his role as District
12 Attorney and he assumed that the County Manager (who is an attorney) or
13 outside counsel had advised her. *See* ROA, Vol. II, pgs. 663-667 (Transcript,
14 Exhibit 9). Finally, Arabia demanded that the hearing be cancelled within 48
15 hours of his "cease and desist" email. ROA, Vol. II, pg. 660 (Transcript, Exhibit
16 5).

17 The HR Director cancelled Vieta-Kabell's appeal hearing based strictly
18 on Arabia's email directive. ROA, Vol. 1, pg. 385 (Findings of Fact,
19 Conclusions of Law, and Recommendation).

Also relevant to analyzing Arabia's appellate arguments is the timeframe of Vieta-Kabell's employment at the State Bar of Nevada. Vieta-Kabell was hired on or about October 7, 2019. *See* ROA, Vol. I, pg. 346 (Opposition to Respondent's Motion to Dismiss Complaint or in the Alternative Motion to Disqualify State Bar of Nevada for Conflict of Interest). Vieta-Kabell left the State Bar's employ on November 22, 2019 to pursue another job opportunity. *Id.* The State Bar received Arabia's response to the grievance on December 19, 2019. *See* ROA, Vol. II, pgs. 663-667 (Transcript, Exhibit 8). The matter was presented to a Screening Panel on March 10, 2020. *See* ROA, Vol. I, pg. 346 (Opposition to Respondent's Motion to Dismiss Complaint or in the Alternative Motion to Disqualify State Bar of Nevada for Conflict of Interest) As a result of the Screening Panel's decision, this matter ultimately proceeded to a Formal Hearing on August 31, 2020. *See* ROA, Vol. 1, pgs. 325-327 (Notice of Formal Hearing).

II.

ARGUMENT

A. Standard of Review

A deferential standard of review is used for the findings of fact made by the duly designated Formal Hearing Panel ("Panel") of the Southern Nevada Disciplinary Board on November 13, 2020. *See* SCR 105(3)(b). This Court will

1 not set the Panel's findings of fact aside unless they are clearly erroneous or
2 unsupported by substantial evidence. The United States Supreme Court has
3 stated that "[a] finding is 'clearly erroneous' when although there is evidence
4 to support it, the reviewing court on the entire evidence is left with the definite
5 and firm conviction that a mistake has been committed."

6 Notably, the Panel found Arabia's testimony less credible than the
7 testimony of the other witnesses in the Formal Hearing. ROA, Vol. I, pg. 382
8 (Findings of Fact, Conclusions of Law, and Recommendation).

9 This Court then conducts a *de novo* review of the Panel's conclusions of
10 law and recommendation for a Public Reprimand. *See* SCR 105(3)(b); *see also*
11 *in re Discipline of Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992).

12 The Panel concluded that Respondent negligently violated RPC 1.7
13 (Conflicts of Interest: Current Clients) and RPC 8.4 (Misconduct) because he
14 failed to recognize "the substantial risk that his personal interest in defending
15 against the appeal could materially limit his ability to fulfill his responsibilities to
16 his client, Nye County." ROA, Vol. I, pg. 385 (Findings of Fact, Conclusions
17 of Law, and Recommendation). The Panel also concluded that Respondent's
18 conduct injured the legal proceedings and the representation of his client. *Id.*
19 The Panel balanced two aggravating factors and one mitigating factor and
20 concluded that they did not warrant any deviation from the proscribed baseline

1 sanction of a reprimand. ROA, Vol. I, pg. 386 (Findings of Fact, Conclusions of
2 Law, and Recommendation).

3 **B. Discussion**

4 **1. NRS 41.032 does not Give an Attorney *Carte Blanche* to Violate**
5 **the Nevada Rules of Professional Conduct.**

6 Arabia asserts that Nevada Revised Statute (“NRS”) §41.032 renders him
7 immune to any disciplinary proceeding based on his conduct as a District
8 Attorney. Arabia relies on the holding in *Wayment v. Holmes*, 112 Nev. 232,
9 912 P.2d 816, (1996) that the district attorney’s office, and the employee that
10 made a discretionary employment decision, is not liable for that decision
11 because it was within the discretion of the district attorney to make such
12 employment decisions. *See* Opening Brief at 8:14-9:16.

13 However, disciplinary proceedings are distinguishable from tort civil
14 actions and NRS 41.032 does not prohibit disciplinary proceedings. In
15 *Martinez v. Maruszczak*, 168 P.3d 720, 727 (2007), this Court engaged in an in-
16 depth analysis of the qualified immunity doctrine. The Court explained that the
17 purpose of Nevada’s general waiver of sovereign immunity was "to compensate
18 victims of government negligence in circumstances like those in which victims
19 of private negligence would be compensated." *Id.* at 727 (*citation omitted*).
20 Any discretionary-act immunity was meant to ‘re-protect’ only those decisions

1 that are "grounded in social, economic, and political policy. " *Id.* at 727-728.

2 Thus, the intent of the immunity was tort protection only.

3 Further, in *Martinez*, the Court distinguished a broad policy decision by a
4 hospital from the specific treatment decision of a physician employed by the
5 hospital. *Id.* at 729. It found that the physician's decision was not entitled to
6 qualified immunity. *Id.* The Court stated

7 to hold that public professionals, such as medical doctors, are
8 immune from any suit arising from the performance of acts of
9 professional discretion would unacceptably leave a large number of
10 clients and patients with no form of recourse against individuals
11 who fail to act according to the reasonable standards of their
12 profession. As many individuals seeking treatment or services from
13 public providers cannot afford the services of private practitioners,
14 this result would also unfairly discriminate against indigent patients
15 and clients, who would be required to accept substandard medical
16 treatment or professional services without protest, while patients
17 who received private care or services could recover in a suit for
18 malpractice.

19 *Id.* at 730. Similar to *Martinez*, it would create an unacceptable two-tier system,
20 to the detriment of public agencies, if, just because he is District Attorney,
Arabia was immune from discipline for a violation of a Nevada Rule of
Professional Conduct for which a privately retained attorney would be
sanctioned. Simply being an officer of the state cannot shield Arabia from
disciplinary prosecution.

1 Finally, even if NRS 41.032 might protect Arabia from disciplinary
2 sanctions for his ‘cease and desist’ email, his email does not qualify because it
3 fails to satisfy all the requirements necessary to be immune. In *Boulder City v.*
4 *Boulder Excavating Inc.*, 124 Nev. 749, 191 P.3d 1175, (2008) this Court used
5 the *Berkovitz-Gaubert* test to analyze a decision to exclude a subcontractor from
6 a public works project. This Court found that the decision (i) “involve[d] an
7 element of individual judgment or choice”, (ii) was “based on considerations of
8 social, economic, or political policy,” and (iii) was not otherwise prohibited by
9 statute. *Id.* at 757-759 (citations omitted). Satisfaction of these three elements
10 means that the decision was protected by qualified immunity. *Id.*

11 In this instance, RPC 1.7 prohibits Arabia’s decision to advise the HR
12 Director regarding the propriety of conducting an appeal hearing on his own
13 decision to fire an employee. *See* ROA, Vol. I, pg. 385 (Findings of Fact,
14 Conclusions of Law, and Recommendation). Arabia is aware that a district
15 attorney’s conduct is limited by the Rules of Professional Conduct, and
16 specifically RPC 1.7. *See e.g.*, ROA, Vol. I, pg. 28 (Motion to Dismiss). This
17 is apparent in the policies and procedures that result in the delegation of tasks
18 to outside counsel. *See* ROA, Vol. II, pg. 449-450, 468-469, 516-517, and 522-
19 527 (Transcript). Thus, even if qualified immunity applied to actions sounding
20 outside of tort, it would not apply to this proceeding.

1 The Disciplinary Board decisions that NRS 41.032 does not prohibit this
2 disciplinary matter should be upheld.

3 **2. The Exclusive Jurisdiction in Supreme Court Rule 99 is not**
4 **Superseded by NRS 281A.020 *et seq.***

5 Rule 99 of the Nevada Supreme Court Rules (“SCR”) provides that:

6 [e]very attorney admitted to practice law in Nevada,
7 specially admitted by a court of this state for a particular
8 proceeding, practicing law here, whether specially admitted or not,
9 or whose advertising for legal services regularly appears in Nevada
is subject to the exclusive disciplinary jurisdiction of the supreme
court and the disciplinary boards and hearing panels created by
these rules.

10 Respondent argues that NRS 281A.010 *et seq.* prohibits this Panel, and
11 ultimately the Nevada Supreme Court, from exercising the jurisdiction granted
12 in SCR 99. NRS 281A.080 states:

13 1. Except as otherwise provided in this section, the
14 Commission has jurisdiction to investigate and take appropriate
15 action regarding an alleged violation of this chapter by a public
16 officer or employee or former public officer or employee in any
proceeding commenced by an ethics complaint, which is filed with
the Commission or initiated by the Commission on its own motion,
within 2 years after the alleged violation or reasonable discovery of
the alleged violation.

17 2. The Commission does not have jurisdiction
18 regarding alleged conduct by a public officer or employee or former
19 public officer or employee for which:

20 (a) A complaint may be filed or, if the applicable
limitations period has expired, could have been filed with the

1 United States Equal Employment Opportunity Commission or the
2 Nevada Equal Rights Commission; or

3 (b) A complaint or employment-related grievance may
4 be filed or, if the applicable limitations period has expired, could
5 have been filed with another appropriate agency with jurisdiction
6 to redress alleged discrimination or harassment, including, without
7 limitation, a state or local employee-management relations board or
8 similar state or local agency, but any bar on the Commission's
jurisdiction imposed by this subsection applies only to the extent
that it pertains to the alleged discrimination or harassment, and this
subsection does not deprive the Commission of jurisdiction
regarding the alleged conduct if such conduct is sanctionable
separately or concurrently under the provisions of this chapter,
irrespective of the alleged discrimination or harassment.

9 In contrast to SCR 99, NRS 281A.080 does not assert exclusive
10 jurisdiction over individuals that are public officers or employees. In fact, NRS
11 281A.080 specifically acknowledges that there may be dual jurisdiction over an
12 individual because of particular conduct.

13 Respondent is an attorney admitted to practice law in Nevada. ROA,
14 Vol. I, pg. 382 (Findings of Fact, Conclusions of Law, and Recommendation).
15 Therefore, this Court, and the Disciplinary Board designated by this Court, has
16 jurisdiction to hear allegations that Respondent violated the *Nevada Rules of*
17 *Professional Conduct*. Although the Commission on Ethics *may* also seek to
18 “investigate and take proper action regarding an alleged violation of this chapter
19 by” Respondent, such investigation and/or action does not strip the Nevada
20 Supreme Court of its jurisdiction.

1 To hold otherwise would render RPC 3.8 (Special Responsibilities of a
2 Prosecutor) and RPC 1.11 (Special Conflicts of Interest for Former and Current
3 Government Officers and Employees) useless. It would also mean that publicly
4 appointed attorneys have different ethical obligations under RPC 3.1
5 (Meritorious Claims and Contentions) and RPC 1.2 (Scope of Representation
6 and Allocation of Authority Between Client and Lawyer). This Court has held
7 that interpretations of statutes, similar to that proposed by Arabia are
8 disfavored. *See Rodgers v. Rodgers*, 110 Nev. 1370, 1373, 887 P.2d 269, 271,
9 (1994) (“No part of a statute should be rendered nugatory, nor any language
10 turned to mere surplusage, if such consequences can properly be avoided.”)
11 (*superseded by statute on other grounds*) (*citations omitted*).

12 The Commission on Ethics’ potential jurisdiction does not prohibit this
13 Court from exercising disciplinary jurisdiction over Nevada-licensed Arabia.

14 **3. The Panel’s Conclusion that Respondent Negligently Violated**
15 **RPC 1.7 and RPC 8.4, Causing Injury, is Supported by Clear and**
Convincing Evidence.

16 Arabia argues that he had a duty to advise Nye County regarding the
17 propriety of Vieta-Kabell’s appeal hearing. Opening Brief at 13:5-8. This
18 alleged duty is not paramount to his duty, as a licensed attorney, to abide by the
19 Nevada Rules of Professional Conduct. Presuming Arabia’s assertion is correct,
20 he could have discharged his advisory duty by delegating the responsibility to

1 outside counsel, similar to what Arabia acknowledged occurs in ‘litigation.’ *See*
2 ROA, Vol. II, pg. 468 and 543-545 (Transcript).

3 Arabia also argues that he “had nothing to lose/gain” when he advised the
4 HR Director to ‘cease and desist’ in conducting Vieta-Kabell’s appeal hearing.
5 *See* Opening Brief at 13:12-13. Arabia asserts that this alleged lack of interest
6 in the outcome negates any potential conflict of interest.

7 RPC 1.7 provides:

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

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

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

14 RPC 1.7 does not require that acting attorney *actually* have a personal
15 interest that materially limits his ability to fully advocate for his client; it only
16 requires that there be a “significant risk” of such limitation. Arabia’s
17 interpretation of RPC 1.7 would gut the rule — all an attorney would do is assert
18 that he did not *actually* have a subjective interest in the outcome. Arabia’s
19 interpretation of the application of RPC 1.7 should be rejected.

1 Moreover, the evidence in the hearing supports a finding that there was
2 significant risk that Arabia's personal interest actually materially limited his
3 ability to represent Nye County.

4 First is the email itself. Arabia emailed the HR Director the same day the
5 hearing was set, and weeks prior to when the hearing was to be held. *See* ROA,
6 Vol. II, pg. 660 (Transcript, Exhibit 5). In the email Arabia asserted an advocacy
7 position when he *demand*ed Nye County "cease and desist" holding the hearing
8 and stated "I have the right to" engage in particular conduct. *See id.* Arabia also
9 demanded a result from the HR Director within 48 hours of his email. *See id.*
10 Again, this was an advocacy position. Yet, Arabia sent the email only to Nye
11 County representatives, and not the opposing party or counsel, implicitly taking
12 advantage of his position as an advisor to those people. *See id.*

13 Second, Arabia testified that he expected outside counsel (i.e. Rebecca
14 Bruch, Esq.) would ultimately be assigned to represent Nye County in the
15 dispute regarding Vieta-Kabell's termination. *See* ROA, Vol. II, pg. 543-545
16 (Transcript). He also testified that *he* "didn't want to have to prepare for [the
17 hearing] if it wasn't going to go forward." *See* ROA, Vol. II, pg. 473-474
18 (Transcript). Arabia, at least implicitly, knew that he had a conflict of interest
19 in advising Nye County regarding Vieta-Kabell's request and that it was in his
20 own personal interest to demand the quick cancellation of the appeal hearing.

1 RPC 1.7 can be violated even if no client suffers harm. *Compare* ABA
2 Standards for Imposing Lawyer Sanctions, Standard 4.32 (“Suspension is
3 generally appropriate when a lawyer knows of a conflict of interest and does not
4 fully disclose to a client the possible effect of that conflict, and causes injury or
5 potential injury to a client”), Standard 4.33 (“Reprimand is generally appropriate
6 when a lawyer is negligent in determining whether the representation of a client
7 may be materially affects by the lawyer’s own interests . . . and causes injury or
8 potential injury to a client.”), and Standard 4.34 (“Admonition is generally
9 appropriate when a lawyer engages in an isolated instance of negligence in
10 determining whether the representation of a client may be materially affects by
11 the lawyer’s own interest . . . and causes little or no actual or potential injury to
12 a client.”) A lawyer’s duty of loyalty to a client is embodied in his obligation to
13 provide conflict-free representation or obtain informed consent to proceed
14 despite a potential conflict. See Annotated Model Rules of Professional
15 Conduct, RPC 1.7, Comment [1] and [10] (9th ed. 2019). Crucial to analyzing
16 a conflict under RPC 1.7 is the perception that the lawyer is advocating fully for
17 the client’s benefit, not the benefit of another client, a former client, a third
18 person, or himself. See e.g. Annotated Model Rules of Professional Conduct,
19 pg. 159 (“Government-Entity Consent”) (9th ed. 2019). The propriety of the
20 advocacy is irrelevant if the perception is that the advocacy is skewed.

1 The evidence shows that Arabia violated RPC 1.7 when he gave Nye
2 County ‘advice’ despite the significant risk that his representation of Nye County
3 was materially limited by his own personal interest in protecting his decision to
4 terminate Vieta-Kabell’s employment.

5 Finally, Arabia argues that there is not clear and convincing evidence that
6 he violated RPC 8.4(d) because the HR Director is the one that officially
7 cancelled Vieta-Kabell’s appeal hearing. *See* Opening Brief at 14:3-13. The
8 evidence belies this argument. No other attorney communicated with the HR
9 Director about the propriety of the appeal hearing before it was cancelled on
10 September 25, 2019. ROA, Vol. I, Pg. 384-385 (Findings of Fact, Conclusions
11 of Law, and Recommendation). The HR Director relied strictly on Arabia’s
12 directive when she cancelled Vieta-Kabell’s appeal hearing. *Id.* This is clear
13 and convincing evidence that Arabia’s conduct prohibited the due administration
14 of the appeal hearing, and thus, the related justice.

15 The Panel’s conclusions that Arabia negligently violated RPC 1.7 and
16 RPC 8.4 causing injury to his client and the legal proceedings are supported by
17 clear and convincing evidence, and therefore, should be adopted by this Court.

18 ///

20 ///

1 **4. Assistant Bar Counsel's Roles in this Matter Does not Impact**
2 **the Appropriate Sanction for Respondent's Misconduct.**

3 Arabia alleges that the Panel's recommendation for discipline should be
4 vacated because of an alleged conflict with Assistant Bar Counsel R. Kait
5 Flocchini prosecuting the disciplinary matter. *See* Opening Brief at 14:14-17:15.

6 State Bar Counsel is tasked with investigating all matters involving possible
7 attorney misconduct and prosecuting such matters before all forums in the name
8 of the State Bar of Nevada. *See* SCR 104. Thus, bar counsel is a government
9 agency for purposes of reviewing conflicts of interest. In addition, Michael
10 Vieta-Kabell, Daniel Young, and Gerard Gosioco are former government
11 employees because each was a Nye County Deputy District Attorney.

12 RPC 1.11 (Special Conflicts of Interest for Former and Current
13 Government Officers and Employees) provides that a lawyer who has formerly
14 served as a public officer or employee of the government is required to refrain
15 from revealing, or using to the disadvantage of the former client, information
16 relating to prior representations, except as these Rules would permit or require
17 with respect to a client. The lawyer is also prohibited from representing a client
18 in connection with a matter in which the lawyer participated personally and
19 substantially as a public officer or employee, unless informed consent is given
20 for the representation.

1 RPC 1.11 also provides:

2 (b) When a lawyer is disqualified from representation under
3 paragraph (a), no lawyer in a firm with which that lawyer is
4 associated may knowingly undertake or continue representation in
5 such a matter unless:

6 (1) The disqualified lawyer is timely screened from any
7 participation in the matter and is apportioned no part of the fee
8 therefrom; and

9 (2) Written notice is promptly given to the appropriate
10 government agency to enable it to ascertain compliance with the
11 provisions of this Rule.

12 Mr. Gosioco was not employed by Nye County on or about September 23,
13 2019 and September 24, 2019. Thus, he could not have personally or
14 substantially participated in Respondent's communications regarding whether
15 Nye County should conduct a hearing pursuant to Mr. Vieta-Kabell's request.
16 Without the participation, there is no need to further apply RPC 1.11 to Mr.
17 Gosioco. Nonetheless in an abundance of caution, he was screened from this
18 matter.

19 Respondent has not alleged that Mr. Young personally or substantially
20 participated in his communications regarding whether Nye County should
 conduct a hearing pursuant to Mr. Vieta-Kabell's request. Thus, there is no
 evidence that Mr. Young could not have participated in this matter. Regardless,
 and again in an abundance of caution, Mr. Young was screened from this matter.

1 Finally, Vieta-Kabell's participation in the underlying matter- via his
2 request for a hearing regarding his termination by Arabia and Arabia's advice to
3 the Nye County Human Resources Director- was specifically not while he was
4 a public officer or employee. Again though, Vieta-Kabell was screened from
5 the investigation of the grievance during the brief time that he was employed at
6 the State Bar. Further, Vieta-Kabell was employed by the State Bar from
7 October 7, 2019 to November 22, 2019. This means , Vieta-Kabell was not
8 employed by the State Bar when Arabia submitted his initial response to the
9 grievance on December 19, 2019, the matter was presented to a Screening Panel
10 on March 10, 2020, or when the Complaint was filed on April 6, 2020.

11 There is no conflict which would disqualify the Office of Bar Counsel,
12 specifically via Assistant Bar Counsel R. Kait Flocchini, from representing the
13 State Bar in this matter.

14 RPC 1.10 (Imputation of Conflicts of Interest) does not apply to the State
15 Bar because RPC 1.11 specifically addresses conflicts of interest for attorneys
16 at the Office of Bar Counsel. Regardless, even if RPC 1.10 is applied, it does
17 not result in a finding that Assistant Bar Counsel R. Kait Flocchini is precluded
18 from representing the State Bar in this matter.

19 ///

1 RPC 1.10 states, pertinent part:

2 (a) While lawyers are associated in a firm, none of them shall
3 knowingly represent a client when any one of them practicing alone
4 would be prohibited from doing so by Rules 1.7, 1.9, or 2.2, unless
5 the prohibition is based on a personal interest of the prohibited
6 lawyer and does not present a significant risk of materially limiting
7 the representation of the client by the remaining lawyers in the firm.

8 It appears that Respondent's alleged concern is that Vieta-Kabell and/or
9 Mr. Young would have a personal interest that would materially limit their
10 responsibilities to the State Bar. This exact concern is addressed in the
11 exception set forth in RPC 1.10. Prohibitions of one lawyer, due to a personal
12 interest, is explicitly not imputed to the rest of the firm. Thus, application of
13 RPC 1.10 does not prohibit Assistant Bar Counsel R. Kait Flocchini from
14 representing the State Bar in this matter.

15 Arabia alleges that Assistant Bar Counsel R. Kait Flocchini would not be
16 able to assess the matter in a dispassionate manner. See Opening Brief at 17:2-
17 5. Respondent's argument fails to acknowledge that the Office of Bar Counsel,
18 and all lawyers therein, are bound by RPC 3.1 (Meritorious Claim and
19 Contentions). Further, a Screening Panel initially determined that Respondent
20 engaged in misconduct when he demanded the HR Director cancel a hearing, the
21 Complaint in this matter survived one Motion to Dismiss and a Motion for
22 Summary Judgment, and after Arabia presented a full defense the Hearing Panel

1 ultimately found clear and convincing evidence of violations of the Rules of
2 Professional Conduct that warranted discipline. Counsel is not required to be
3 ‘dispassionate’ in representing the Bar during disciplinary proceedings. The
4 decisions of the panels support that the prosecution of this matter was warranted.

5 There is no reason to vacate the Panel’s decision and require a new
6 prosecutor retry this matter.


7 **III.**

8 **CONCLUSION**

9 The State Bar respectfully requests that this Court (i) adopt the Panel’s
10 conclusions of law that Respondent negligently violated RPC 1.7 and RPC 8.4
11 thereby causing injury to the client and the integrity of the profession and (ii)
12 impose discipline on Respondent.

13 Respectfully submitted this 5th day of March, 2021.

14 **STATE BAR OF NEVADA**

15 By: 
16 By: [Kait Flocchini \(Mar 5, 2021 18:05 PST\)](#)
17 R. Kait Flocchini, Assistant Bar Counsel
18 Nev. Bar No. 9861
9456 Double R. Blvd, Suite B
Reno, Nevada 89521
Attorney for State Bar of Nevada

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complied with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 2010 in Times New Roman 14 point font size.

2. I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7), it is proportionately spaced, has a typeface of 14 points or more and contains 4,148 words.

3. Finally, I hereby certify that I have read the foregoing Answering Brief of the State Bar of Nevada, and to the best of my knowledge, information and belief, this brief is not frivolous or interposed for any improper purpose. I further certify this brief complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity

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///

1 with the requirements of the Nevada Rules of Appellate Procedure.

2 DATED this 5th day of March, 2021.

3 STATE BAR OF NEVADA
4 DANIEL M. HOOGE, BAR COUNSEL

5 By: 
By: [Kait Flocchini \(Mar 5, 2021 18:05 PST\)](#)

6 R. Kait Flocchini, Asst. Bar Counsel
Nevada Bar No. 9861
7 9456 Double R. Blvd, Suite B
Reno, Nevada 89521
8 (775) 329-4100

1 **CERTIFICATE OF SERVICE BY MAIL**

2 The undersigned hereby certifies that a true and correct copy of the
3 foregoing **ANSWERING BRIEF** was placed in a sealed envelope and sent by
4 U.S. regular mail in Reno, Nevada, postage fully prepaid thereon for first class
5 mail, addressed to:

6 Thomas F. Pitaro, Esq.
7 Emily K. Strand, Esq.
8 PITARO & FUMO
9 601 Las Vegas Blvd. South
10 Las Vegas, NV 89101

11 And was served via e-mail to —emily@fumolaw.com; pitaro@gmail.com.

12 Dated this 5th day of March, 2021.

13 *Kristi A. Faust*
14 Kristi Faust, an employee of the
15 State Bar of Nevada
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Arabia Answering Brief

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