

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

2  
3   IN THE MATTER OF DISCIPLINE )  
4   OF CHRISTOPHER ARABIA, ESQ., )  
5   BAR NO. 9749                    )  
6   \_\_\_\_\_ )

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9                   **STATE BAR OF NEVADA'S**  
10                  **ANSWER TO APPELLANT'S**  
11                  **PETITION FOR REHEARING**

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1                    **ARGUMENT IN OPPOSITION TO THE PETITION FOR**  
2    **REHEARING**

3            **I.     LEGAL STANDARD**

4            The Procedures and Limitations of a Petition for Rehearing are set  
5 forth in Nevada Rules of Appellate Procedure(“NRAP”) 40. NRAP  
6 40(a)(2) states:

7                    **(2) Contents.** The petition shall state briefly and  
8 with particularity the points of law or fact that the petitioner  
9 believes the court has overlooked or misapprehended and  
10 shall contain such argument in support of the petition as the  
11 petitioner desires to present. Oral argument in support of the  
12 petition will not be permitted. Any claim that the court has  
13 overlooked or misapprehended a material fact shall be  
14 supported by a reference to the page of the transcript,  
15 appendix or record where the matter is to be found; any claim  
16 that the court has overlooked or misapprehended a material  
17 question of law or has overlooked, misapplied or failed to  
18 consider controlling authority shall be supported by a  
19 reference to the page of the brief where petitioner has raised  
20 the issue.

NRAP 40(c) states:

15                    **(c) Scope of Application; When Rehearing**  
16 **Considered.**

17                    (1) Matters presented in the briefs and oral arguments  
18 may not be reargued in the petition for rehearing, and no  
19 point may be raised for the first time on rehearing.

20                    (2) The court may consider rehearings in the following  
circumstances:

1 (A) When the court has overlooked or  
2 misapprehended a material fact in the record or a material  
question of law in the case, or

3 (B) When the court has overlooked, misapplied or  
4 failed to consider a statute, procedural rule, regulation or  
decision directly controlling a dispositive issue in the case.

## 5 **II. ARGUMENT**

6 There is no basis to rehear the *de novo* Decision of the Supreme Court  
7 in this Disciplinary Matter. The Petition fails to assert any overlooked  
8 arguments, focusing instead on the assertions set forth in the dissenting  
9 opinion. The Petition also fails to explain or support how the majority's  
10 opinion misapprehended material facts or law.

### 11 **A. Noncompliance with NRAP 40(a)(2).**

12 The Petition fails to cite to an interpretation or application of the  
13 relevant law in petitioner's briefs that the Opinion overlooked,  
14 misapplied, or failed to consider. Thus, the Petition should be denied for  
15 failing to satisfy the requirements of NRAP 40(a)(2).

### 16 **B. The Court Did Not Overlook Any Material Facts or Law.**

17 The 30-page September 23, 2021 Opinion issued in this  
18 disciplinary matter evidences that the Court extensively and closely  
19 examined the record and the applicable law. In the Matter of Discipline  
20 of Christopher R. Arabia, 137 Nev. Adv. Opinion 59 ( Sept. 23, 2021)

1 (hereinafter referred to as “Opinion” for the majority opinion and  
2 “Dissent” for the dissenting opinion).

3 The Petition for Rehearing is devoid of facts or law not addressed  
4 in the Court’s opinion; instead, it is replete with arguments asserted in  
5 the dissenting portion of the opinion. For example, the Petition  
6 arguments from page 3 to page 5 mimic the exact assertions made at page  
7 3 and page 6-7 in the Dissent. Petition pages 6-7 mirrors the dissent’s  
8 assertions on pages 9-10. Finally, the Petition resubmits the dissenting  
9 assertions regarding the application of Standard 4.34 of the ABA  
10 Standards for Imposing Lawyer Sanctions. *Compare* Petition pg. 7 and  
11 Dissent page 10.

12 All of these arguments were thoroughly considered by the Supreme  
13 Court prior to the issuance of the majority and dissenting opinions. *See*  
14 *e.g.* Opinion, fn. 5, fn. 6, and fn. 10 and Dissent at pg. 3, 6, and 7 (citing  
15 to arguments made in the other portion of the opinion). For example, the  
16 Court thoroughly considered the evidence regarding whether outside  
17 counsel was involved in the cancellation of the hearing at issue. *See*  
18 Opinion at pg. 14-15 and Dissent at pg. 3. The Court also meticulously  
19 analyzed (i) RPC 1.7 and RPC 8.4, (ii) interpretations of these rules, and  
20

1 (iii) application of the rules to the facts in this disciplinary matter. *See*  
2 Opinion at pg. 12-17 and dissent at pg. 4-10.

3 The Petition fails to show that the Court (i) did not consider matters  
4 already presented or (ii) overlooked any of the facts or law asserted. In  
5 fact, the re-used assertions are *exactly* what the Court did consider in  
6 arriving at its detailed decision. Therefore, rehearing of the matter is not  
7 warranted.

8 **C. The Court Did Not Misapprehend the Material Facts or**  
9 **Law.**

10 Misapprehension is defined as “a term given to describe the act of  
11 misunderstanding or a mistaken idea.” *Misapprehension*, BLACK'S LAW  
12 DICTIONARY (Free Online Law Dictionary 2nd ed.). The Petition does not  
13 allege that the basic facts of the case have been misunderstood.<sup>1</sup> Those  
14 facts are:

15 1. Arabia terminated a Deputy’s employment at the Nye County  
16 District Attorney’s Office. Opinion at pg. 2 and Dissent at pg. 1.

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19 <sup>1</sup> The Petition argues that the majority opinion’s conclusion are  
20 erroneous. This is not the standard for a Petition for Rehearing. NRAP  
40 (2021).

1           2. The Deputy sought a hearing with Nye County regarding that  
2 termination. Opinion at pg. 3 and Dissent at pg. 1-2.

3           3. The Nye County Human Resources Director set a hearing for the  
4 appeal. *Id.*

5           4. Arabia emailed the Human Resources Director, without  
6 including the Deputy or his counsel in the correspondence, stating “[i]t  
7 is my legal opinion as the Nye County District Attorney that you must  
8 cease and desist from conducting the proposed hearing.” Arabia  
9 demanded confirmation within 48 hours that the hearing was cancelled.  
10 Opinion at pg. 3 and Dissent at pg. 2.

11           5. The Human Resources Director cancelled the hearing based on  
12 Arabia’s direction. Opinion at pg. 3 (*quoting* ROA 427).

13           6. The Deputy also sought redress for the termination in other ways  
14 as well. Opinion at pg. 14 and Dissent at pg. 7.

15           7. Arabia knew that his decision to terminate the Deputy might be  
16 deemed wrong, i.e. he could “take a hit on that,” in *some* venue that  
17 considered the Deputy’s request for redress. *Id.*

18           8. Arabia was passionate about defending his ability to terminate  
19 the Deputy. Opinion at pgs. 13-14, Dissent at pg. 3, Petition at 3:5-10  
20 (reiterating the position that deputies were “at-will” employees).

1           Moreover, the Petition does not argue that the Court  
2 misunderstood the application of Rule 1.7 of the Nevada Rules of  
3 Professional Conduct (“RPC). It also does not argue that the Court  
4 misunderstood the evidentiary burden for a disciplinary matter. Instead,  
5 it argues that the majority opinion’s analysis of the sum of the facts was  
6 insufficient to be clear and convincing evidence of a violation of RPC 1.7.  
7 Petition at 5:7-6:4. Thus, there is no argument that the Court  
8 misunderstood the applicable law for RPC 1.7.

9           The Court’s majority opinion and dissenting opinion focus on  
10 different elements of the application of RPC 1.7. Nonetheless, there is no  
11 indication that either opinion was the result of a misunderstanding of the  
12 Rule of Professional Conduct.

13           Similarly, the Petition is void of argument that the Court  
14 misapprehended the requisite analysis regarding the effect of Arabia’s  
15 conduct on the administration of justice (RPC 8.4). Petition at 6:6-7:3.  
16 Instead, the Petition’s argument focuses on the application of the rule on  
17 the particular facts at issue. *Id.* Thus, there is no mistake alleged, only a  
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19  
20

1 disagreement regarding the conclusion in the majority opinion. This is  
2 insufficient to support rehearing of the Court’s opinion.<sup>2</sup>

3 **D. The Court Did Not Misapply the Disciplinary**  
4 **Standards.**

5 The Court’s majority opinion acknowledges that ‘negligent’ is the  
6 applicable mental state in this matter. Opinion at pg. 18. It also  
7 acknowledges Arabia’s lack of prior discipline. *Id.* Thus, any argument  
8 in the Petition to the contrary is unsupported.

9 The Petition’s only remaining argument regarding the application  
10 of the disciplinary standards is that the majority opinion failed to  
11 consider that Arabia’s conduct potentially “protected the county’s  
12 litigation position” regarding the Deputy’s employment. Petition at 7:7-

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14 <sup>2</sup> In addition, the Petition argues that the “single act” at issue did not  
15 constitute substantial harm to the administration of justice. Petition at  
16 pg. 6-7. This argument was not made in petitioner’s original briefs; the  
17 Opening Brief asserted only that the conduct could not be viewed as  
18 violating RPC 8.4. Opening Brief at pg. 14. Thus, this argument fails to  
19 meet the requirements of NRAP 40(c).  
20



1 9. However, that argument was considered in both opinions (Opinion at  
2 pg. 18 and dissent at pg. 10) and the majority opinion explained its  
3 reasonable balancing of that consideration.

4 Further, the majority opinion's application of Standard 6.23 is  
5 supported by the conclusion that Arabia acted negligently and caused  
6 potential injury to a client and inference with a legal proceeding.

7 Thus, there is insufficient support for reconsideration of the  
8 disciplinary standard applied in this matter.

9 **E. Conclusion.**

10 The Court's opinion thoroughly considered all applicable facts,  
11 Rules of Professional Conduct, and case law in arriving at the decision to  
12 issue a reprimand to Arabia. Further, there was no mistake as to the  
13 application of law to these particular facts. Therefore, there is no basis  
14 for rehearing this disciplinary matter.

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1           Moreover, the majority opinion was a reasonable application of the  
2 law to the facts which should not be reconsidered.

3  
4 Respectfully submitted this 8<sup>th</sup> day of November 2021.

5 **STATE BAR OF NEVADA**  
6 DANIEL M. HOOGE, BAR COUNSEL

7 By:   
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1                                   **CERTIFICATE OF COMPLIANCE**

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

7           2.     I further certify that this brief complies with the page or type  
8 volume limitations of NRAP 32(a)(7) because, excluding the parts of the  
9 brief exempted by NRAP 32(a)(7), it is proportionately spaced, has a  
10 typeface of 14 points or more and contains 1,488 words.


11          3.     Finally, I hereby certify that I have read the foregoing State  
12 Bar of Nevada's Answering to Appellant's Petition for Rehearing, and to  
13 the best of my knowledge, information and belief, this brief is not  
14 frivolous or interposed for any improper purpose. I further certify this  
15 brief complies with all applicable Nevada Rules of Appellate Procedure,  
16 including the requirement of NRAP 28(e), which requires every assertion  
17 in the brief regarding matters in the record to be supported by appropriate  
18 references to the record on appeal. I understand that I may be subject to  
19 sanctions

20    ///

1 in the event that the accompanying brief is not in conformity with the  
2 requirements of the Nevada Rules of Appellate Procedure.

3 DATED this 8th day of November 2021.

4 **STATE BAR OF NEVADA**  
5 DANIEL M. HOOGE, BAR COUNSEL

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7 By: \_\_\_\_\_  
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1                                    **CERTIFICATE OF SERVICE BY MAIL**

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

6            Christopher Arabia, Esq.  
7            c/o Thomas F. Pitaro, Esq.  
8            & Emily Strand, Esq.  
             601 Las Vegas Blvd., South  
             Las Vegas, NV 89101

9    And was served via e-mail to:

- 10           1. Thomas F. Pitaro, Esq.: [pitaro@gmail.com](mailto:pitaro@gmail.com)  
             2. Emily Strand, Esq.: [emily@fumolaw.com](mailto:emily@fumolaw.com)

11  
12    Dated this 8th day of November 2021.

13                                    *Sonia Del Rio*

14                                    \_\_\_\_\_  
                                     Sonia Del Rio, an employee of the  
15                                    State Bar of Nevada