

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVE SANSON, AN INDIVIDUAL;
AND ROB LAUER, AN
INDIVIDUAL,

Appellants,

v.

LAWRA KASSEE BULEN,

Respondent.

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Aug 08 2021 02:28 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

SUPREME COURT CASE NO. 82393

Dist. Court Case No. A-18-784807-C

**APPELLANT’S OPPOSITION TO RESPONDENT’S THIRD REQUEST TO
EXTEND TIME TO FILE ANSWERING BRIEF AND COUNTERMOTION
FOR CONFESSION OF ERROR SANCTION**

Appellants, Sanson and Lauer, hereby oppose the third Motion of Respondent Bulen for an extension to file an Answering Brief in this matter and move for the sanction of confession of error in favor of Appellants on this appeal pursuant to NRAP 31(d)(2).

I. PROCEDURAL HISTORY

Appellants filed their Opening Brief on May 28, 2021, making an Answering Brief due on June 28th. On June 28th no Answering Brief was filed but Respondent’s counsel must have requested a telephonic extension because the Supreme Court entered an order granting a telephonic extension request on June 28th and provided a deadline of July 12th for Respondent to file the Answering brief.

No Answering Brief was filed on July 12th either, that deadline was missed. Instead, on July 12th Respondent's counsel filed a "Request to Extend Time to File Response to Appellants' Opening Brief." The Request was not even submitted as an emergency motion and Respondent knew that this tactic was almost certain to delay adjudication while the Request or motion was pending.

The Supreme Court took five days to address the second extension Request and on July 19th entered an order denying the extension request but nevertheless allowing seven (7) additional days to file the Answering Brief. Although the Request for an extension to July 26th to file the Answering Brief was denied, because the Order denying the Motion was entered on July 19th and allowed an additional seven (7) days to file the Brief, the practical effect of the Order denying the motion was that the extension sought was still granted because either way the Respondent had until July 26th to file the Answering Brief.

Instead of making good use of the delays and filing the Answering Brief as soon as possible, July 26th came and went—still with no Answering Brief filed. This time, not even a timely motion to extend time was filed before the deadline passed. Then, on August 2nd Respondents filed yet another "Request to Extend Time to File Opening Reply Brief." This was not only the third extension request but was made *after* the Supreme Court made clear that extension requests would not be granted and that "[f]ailure to timely file the answering brief may result in the

imposition of sanctions, including the disposition of this appeal without an answer from respondent.” Order Denying Motion (July 19, 2021).

Pursuant to the prior Order Denying Motion of this Court, the Appellants now oppose the request for file an untimely Answering Brief and move for the sanction of a confession of error by the Respondent under NRAP 31(d)(2).

II. LAW AND ARGUMENT

Appellate courts “may, in [their] discretion, treat the failure of a respondent to file his brief as a confession of error, and reverse the judgment without consideration of the merits of the appeal.” *Rhode Island v. Prins*, 96 Nev. 565, 566, 613 P.2d 408, 409 (1980). NRAP 31(d)(2) states:

If a respondent fails to file an answering brief, respondent will not be heard at oral argument except by permission of the court. The failure of respondent to file a brief may be treated by the court as a confession of error and appropriate disposition of the appeal thereafter made.

This Court’s jurisprudence abounds with examples of cases where parties failed to file a timely brief and the same was treated as a confession of error. *Melvin L. Lukins & Sons v. Kast*, 91 Nev. 116, 116, 532 P.2d 602, 602 (1975) (“respondent’s failure to file an answering brief is confession of error without further consideration of the appeal merits”); *Summa Corp. v. Brooks Rent-A-Car*, 95 Nev. 779, 780, 602 P.2d 192, 193 (1979) (“we elect to treat respondent's failure to file its answering brief as a confession of error.”); *Polk v. State*, 126 Nev. 180, 184-86, 233 P.3d 357, 360-61 (2010) (treating the State's failure to respond to a significant constitutional issue

raised by appellant as a confession of error); *Las Vegas Dev. Grp., Ltd. Liab. Co. v. Blaha*, 134 Nev. 252, 253 n.3, 416 P.3d 233, 235 (2018) (“We note that respondents EZ and K&L Baxter Family Limited Partnership failed to file an answering brief, and we treat this failure as a confession of error as to these respondents.”). Part of the reason for this rule is to avoid delay and to avoid the strain it puts on the Court’s resources to entertain and grant repetitive motions for extensions or to serve reminders to file briefs. *Kitchen Factors v. Brown*, 91 Nev. 308, 308, 535 P.2d 677, 677 (1975) (finding failure to file an answering brief as confession of error because “[t]o indulge respondents further would not only delay final resolution of appellant’s claim, but would also preclude our assigning other, more concerned litigants the hearing time now scheduled for this cause.”).

In the present case, there is little good reason to allow an Answering Brief to be filed untimely. The Respondent was already granted one extension, denied a second extension and was plainly warned by this Court’s prior order that further failure to file a timely brief by July 26th may be treated as confession of error. Indeed, the third motion for an extension was not even filed prior to the expiration of the July 26th deadline. Counsel for the Respondent attaches no affidavit attesting to why the Answering Brief was not timely filed or why two other extensions were not good enough to meet this Court’s deadlines. Counsel did argue that he had staff turnover, that the deadline was inadvertently missed on calendaring, and that he had

a two-day evidentiary hearing during the last month. However, Respondent must be responsible for the actions of her attorney and thus are not justified excuses for repeated failure to file the brief. *Lange v. Hickman*, 92 Nev. 41, 43, 544 P.2d 1208, 1209 (1976) (“The attorney's neglect is imputed to his client...”).

Indeed, the facts of this case are similar to one of the leading cases on this issue in Nevada, *Huckabay Props. v. NC Auto Parts, Ltd. Liab. Co.*, 130 Nev. 196, 322 P.3d 429 (2014). *Huckabay Props.* involved dismissal of an appeal for failure to file an Opening Brief (not an Answering Brief as in this case), but the principals are the same. In that case, appellant’s counsel had sought and was granted a first extension to file their brief, then sought a second extension which was denied but still allowed a small window of time to actually file the brief with a warning that further missing the deadline might result in dispositive sanctions. The attorneys then missed that deadline and then filed an untimely third motion for extension, arguing they just needed another short amount of time to finish the brief. The attorneys further argued that their inability to timely file the brief was based on a “personal commitment” of counsel and briefing and oral argument in another matter. *Id.* at 199-200. In en banc affirming dismissal of the appeal for failure to file briefs, the Supreme Court reiterated that “a civil litigant is bound by the acts or omissions of its voluntarily chosen attorney” and that “policy considerations, including the public's interest in expeditious resolution of appeals, the parties' interests in bringing

litigation to a final and stable judgment, prejudice to the opposing side, and judicial administration concerns, such as the court's need to manage its sizeable and growing docket” favor dispositive sanctions for repeated failures to file a brief when placed on notice of sanctions. *Id.* at 198.

Frankly, in the third request for an extension Respondent’s counsel notes nothing other than routine office issues that any attorney faces (another hearing, staffing and calendaring issues) to excuse his failure to file an Answering Brief. Clearly the brief was not ready by either the June 28th, July 12th or July 26th deadlines. There is no reason to justify allowing filing the brief now.

Moreover, a cursory search into the disciplinary history of Respondent’s counsel, Brandon L. Phillips, Esq (Bar # 12264) reveals multiple letters of reprimand from the State Bar of Nevada for failing to meet deadlines, including (1) failing to attend a hearing for a client and (2) *previously failing to timely file an appellate brief*. Indeed, the State Bar’s Letter of Reprimand to Mr. Phillips of January 25, 2019 states that he represented Queste Capital in an appellate matter and Mr. Phillips repeatedly missed deadlines to file the case appeal statement, the appendix and the opening brief, resulting in sanctions and referral by this Court of Mr. Phillips to the State Bar for discipline.¹ To use an expression from Nevada’s old-western cowboy days, this

¹ See ***Exhibit 1***. Counsel for Appellants has been unable to find the order sanctioning Mr. Phillips or the prior case number or it would be cited.

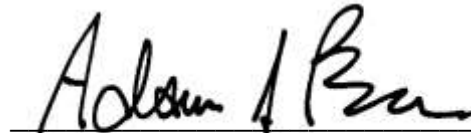
is not Mr. Phillips' first rodeo when it comes to missing appellate brief deadlines and ignoring this Court's briefing schedule orders. Mr. Phillips is particularly unworthy of any late extension.

III. CONCLUSION

In closing, the Respondent was given many opportunities to comply with court rules and file her Answering Brief. She failed to do so. Mundane excuses of counsel for missing the deadlines are insufficient as Respondent is responsible for her attorney's failure to meet deadlines. Consistent with this Court's long history of entering confession of error for repeated failure to meet briefing deadlines and a prior history of sanctioning Respondent's counsel for that exact conduct, Appellants request that Respondent's third motion for an extension of time be denied and that this Court treat the failure to file an Answering Brief as a confession of error and remand this matter to the District Court for entry of the \$10,000 per litigant sanctions the Appellants sought in their Anti-SLAPP action.

Dated this 8th day of August, 2021.

BREEDEN & ASSOCIATES, PLLC



ADAM J. BREIDEN, ESQ.

Nevada Bar No. 008768

376 E. Warm Springs Rd., Suite 120

Las Vegas, NV 89119

Ph. (702) 819-7770

Attorney for Appellants Sanson & Lauer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of August 2021, I served a copy of the foregoing legal document entitled **APPELLANT’S OPPOSITION TO RESPONDENT’S THIRD REQUEST TO EXTEND TIME TO FILE ANSWERING BRIEF AND COUNTERMOTION FOR CONFESSION OF ERROR** via the method indicated below:

X	Pursuant to NRAP 25(c), by electronically serving all counsel and e-mails registered to this matter on the Supreme Court Electronic Filing System.
	<p>Pursuant to NRCP 5, by placing a copy in the US mail, postage pre-paid to the following counsel of record or parties in proper person:</p> <p style="text-align: center;">Lawra Kasee Bulen Brandon L. Phillips, Esq. BRANDON L. PHILLIPS ATTORNEY AT LAW PLLC 1455 E. Tropicana Avenue, Suite 750 Las Vegas, Nevada 89119 <i>Attorneys for Respondent</i></p>
	Via receipt of copy (proof of service to follow)

An Attorney or Employee of the firm:

/s/ Adam J. Breeden
BREEDEN & ASSOCIATES PLLC

Exhibit 1



January 25, 2019

LETTER OF REPRIMAND

Brandon L. Phillips, Esq.
Nevada Bar No. 12264
c/o David A. Clark, Esq.
Lipson Neilson, P.C.
9900 Covington Cross Drive
Las Vegas, NV 89144

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

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

www.nvbar.org

Dear Mr. Phillips:

You represented Queste Capital in an appeal which originally was filed in August 2016. On February 9, 2017, after the parties were unable to reach a settlement, the Nevada Supreme Court reinstated briefing and ordered that the Opening Brief and Appendix be filed and served within ninety (90) days. You also were ordered to file and serve a transcript request form within fifteen (15) days, and file the Case Appeal Statement within ten (10) days.

On April 13, 2017, the Supreme Court entered an Order Conditionally Imposing Sanctions on you because you had failed to file the Case Appeal Statement and a transcript request form.

The Supreme Court received the Case Appeal Statement and a transcript request form on May 3, 2017.

The Supreme Court's Order of April 13, 2017, subsequently was vacated in an Order filed on May 9, 2017, which gave you thirty (30) days to file the Opening Brief and Appendix. The Order warned you that failure to file the documents as directed could result in imposition of sanctions.

On July 28, 2017, the Supreme Court filed an Order to File Documents and Imposing Sanctions because you failed to file the Opening Brief and Appendix. You were given fifteen (15) days to file the documents or face sanctions, including possible dismissal of the appeal. Also, because you had been conditionally sanctioned previously in the case for failing to comply with the Supreme Court's orders, the Supreme Court ordered you to pay \$250 to the Supreme Court Law Library within fifteen (15) days. You filed proof of payment of the sanction on August 14, 2017.

After entry of the July 28, 2017, Order, you filed four (4) motions seeking continuances based on continued settlement negotiations:

- a. A Motion to Stay, filed on August 30, 2017;
- b. A Motion to Extend Time, filed on November 1, 2017;
- c. A Notice of Settlement and Motion to Extend Time to File Stipulation and Dismissal, filed on December 18, 2017; and
- d. A Motion to Submit Matter to Settlement and Stay Briefing Schedule, filed on January 3, 2018. You argued that the parties were very close to settlement, but needed assistance resolving issues in the language of the settlement documents.

On February 1, 2018, the Supreme Court denied your January 3, 2018, motion and ordered you to file the Opening Brief and Appendix within eleven (11) days or face additional sanctions, including possible dismissal of the appeal.

You did not file the Opening Brief, but you did file a Motion for Reconsideration on February 13, 2018. The Motion was denied in an Order filed March 7, 2018, and you were directed to file the Opening Brief and Appendix within eleven (11) days.

On May 14, 2018, as you had still not filed the Opening Brief, the Supreme Court filed an Order Imposing Sanctions and Referring Counsel to the State Bar of Nevada. You also were ordered to pay \$500 to the Supreme Court Law Library and given another eleven (11) days to file the Opening Brief or a motion to dismiss the appeal.

On May 25, 2018, you filed proof of the payment of the fine and a Notice of Withdrawal of the Appeal. Your motion was granted on June 4, 2018, and the case was closed.

Opposing counsel in the appellate matter did not oppose any motions which you filed with the Supreme Court. Further, with your response to the State Bar, you presented declarations from your clients which stated that you followed their directions for the case and pursuit of a settlement.

Accordingly, you are hereby Reprimanded for violating Rule of Professional Conduct 1.3 (Diligence) and RPC 3.4(c) (Fairness to Opposing Party and Counsel). You also are assessed costs of \$1,500 pursuant to Supreme Court Rule 120 (Costs).

Sincerely,



Dawn M. Lozano, Esq.
Formal Hearing Panel Chair

STATE BAR OF NEVADA

August 11, 2020

Brandon L. Phillips, Esq.
1455 E. Tropicana Ave., Ste. 750
Las Vegas, NV 89119

LETTER OF REPRIMAND

Re: Grievance OBC20-0489

Dear Mr. Phillips:

On July 21, 2020, a Screening Panel of the Southern Nevada Disciplinary Board considered the above-referenced grievance. Based on the evidence presented, the Panel concluded that you violated the Rules of Professional Conduct ("RPC") and should be issued a Letter of Reprimand. This letter shall constitute a delivery of that reprimand.

On or about May 26, 2017, you were retained by Maria Garcia (hereinafter "Ms. Garcia") and Herlinda Carroll (hereinafter "Ms. Carroll") to represent them in a personal injury claim stemming from an automobile accident. RPC 1.4 (Communication) states, in pertinent part, that a lawyer shall "keep the client reasonably informed about the status of a matter" and "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." You did not inform Ms. Garcia or Ms. Carroll of the potential of a conflict of interest. Moreover, you failed to keep Ms. Garcia and Ms. Carroll reasonably informed about the status of their matter. Under ABA Standard 4.44, admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes little or no actual or potential injury to a client. This type of ethical breach could cause potential injury to Ms. Garcia and/or Ms. Carroll.

RPC 1.7 (Conflict of Interest: Current Clients) states, in pertinent part, that a lawyer "shall not represent a client if the representation involves a concurrent conflict of interest. The Rule further explains that there is a concurrent conflict of interest if "(1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer." Notwithstanding this conflict, a lawyer may represent a client if "(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; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other



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proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing.” Similarly, RPC 1.8 (Conflict of Interest: Current Clients: Specific Rules) states, in pertinent part, that a lawyer “who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients . . . unless each client gives informed consent, in a writing signed by the client. The lawyer’s disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.”

You represent both Ms. Garcia and Ms. Carroll in the same action. Neither Ms. Garcia nor Ms. Carroll were informed about the potential of a conflict. As such, Ms. Garcia and Ms. Carroll would not have been able to give informed consent pertaining to the potential conflict, confirmed in writing. Moreover, you negotiated a resolution where both Ms. Garcia and Ms. Carroll would receive an aggregate settlement amount of \$45,000. Under ABA Standard 4.33, reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer’s own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client. This type of ethical breach could cause injury to Ms. Garcia and/or Ms. Carroll.

Accordingly, you are hereby REPRIMANDED for violating RPC 1.4 (Communication), RPC 1.7 (Conflict of Interest: Current Clients), and RPC 1.8 (Conflict of Interest: Current Clients: Specific Rules). In addition, pursuant to Supreme Court Rule 120(3), you are required to remit to the State Bar of Nevada the amount of \$1,500 *within 30 days* of this Letter. I trust that this reprimand will serve as a reminder to you of your ethical obligations, and that no such problems will arise in the future.

DATED this ^{Aug 12, 2020} ___ day of August 2020.

Paul Luke Puschnig

Paul Luke Puschnig (Aug 12, 2020 07:41 PDT)

Luke Puschnig, Esq.
Screening Panel Chair
Southern Nevada Disciplinary Board




Brandon Phillips Letter of Reprimand

Final Audit Report

2020-08-12

Created:	2020-08-11
By:	Belinda Felix (belindaf@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAArqiFkG9Ec8Mna1VbuNx5OAhdeHNdHqzA

"Brandon Phillips Letter of Reprimand" History

-  Document created by Belinda Felix (belindaf@nvbar.org)
2020-08-11 - 9:43:42 PM GMT- IP address: 68.224.102.64
-  Document emailed to Paul Luke Puschnig (merecadans@cox.net) for signature
2020-08-11 - 9:44:12 PM GMT
-  Email viewed by Paul Luke Puschnig (merecadans@cox.net)
2020-08-12 - 2:41:20 PM GMT- IP address: 72.202.16.52
-  Document e-signed by Paul Luke Puschnig (merecadans@cox.net)
Signature Date: 2020-08-12 - 2:41:58 PM GMT - Time Source: server- IP address: 72.202.16.52
-  Signed document emailed to Paul Luke Puschnig (merecadans@cox.net) and Belinda Felix (belindaf@nvbar.org)
2020-08-12 - 2:41:58 PM GMT



FILED

AUG 08 2017

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

BY: *Charles Pleasant*
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA,

Complainant,

vs.

BRANDON L. PHILLIPS, ESQ.,

Nevada Bar No. 12264,

Respondent

LETTER OF REPRIMAND

TO: Brandon L. Phillips, Esq.
c/o David A. Clark Esq.
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144

OBC16-1406/Alycia Hansen

On Friday May 12, 2017, a Hearing Panel of the Southern Nevada Disciplinary Panel convened to determine whether your conduct at a taxation hearing which occurred on August 11, 2016, and subsequent actions violated the Rules of Professional Conduct.

You appeared on behalf of a taxpayer at the initial taxation hearing. Prior to the initial tax hearing, you believed your role at the hearing was to assist the taxpayer's original counsel in representing the taxpayer and to learn more about taxation hearings. However, after the taxpayer's original counsel was not permitted to conduct the hearing because he was not a lawyer, you took over as lead counsel and conducted the hearing on behalf of the taxpayer.

At the conclusion of the hearing, the matter was reset so that the taxpayer could provide additional information to the presiding judge. Although you testified that you believed the taxpayer to be your client, you did not communicate with the taxpayer following the hearing, did not inform the taxpayer that her original counsel was not a lawyer and could not represent her, and

1 did not attend the taxpayer's subsequent hearing. On or about December 7, 2016, you submitted a
2 letter indicating that you were withdrawing from the matter.

3 Rule of Professional Conduct 1.1 (Competence) requires that:

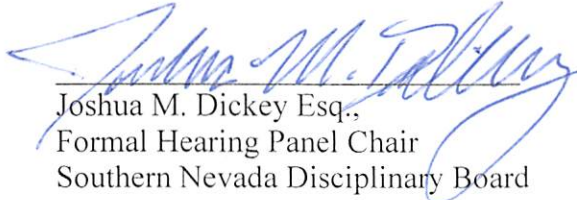
4 "A lawyer shall provide competent representation to a client.
5 Competent representation requires the legal knowledge, skill,
6 thoroughness and preparation reasonably necessary for the
7 representation."

8 Your conduct did not meet this minimum standard as you failed to communicate with the
9 taxpayer, including failing to inform the taxpayer that her original retained counsel was not even a
10 lawyer, and failed to attend the follow-up hearing.

11 As such, you violated Rule of Professional Conduct 1.1 (Competence) and are hereby

REPRIMANDED.

12 DATED this 7th day of August, 2017.

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14 
15 Joshua M. Dickey Esq.,
16 Formal Hearing Panel Chair
17 Southern Nevada Disciplinary Board
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