

1 inconsistencies with the evidence. Initially
2 Mr. Mitrov -- Mr. Leventhal had testified that he did
3 not at any point have possession of a Maserati. When
4 Mr. Mitrov took the stand, he testified that **Electronically Filed**
5 Mr. Leventhal did, in fact, have possession of a **Jul 21 2021 08:26 a.m.**
6 Maserati for about a month. **Elizabeth A. Brown**
Clerk of Supreme Court

7 As to the Viper, Mr. Mitrov testified that
8 Mr. Leventhal did, in fact, have possession of the
9 Viper for almost a year. And he had -- Mr. Mitrov
10 testified that he did file a grievance in June of
11 2020 to get Mr. Leventhal's attention because at that
12 point, after sending Mr. Leventhal numerous texts
13 asking to pick up the Viper, he still had not
14 received the Viper by the time he signed -- submit
15 the grievance to the State Bar. It was only after
16 the submission of his grievance did he speak to
17 Mr. Leventhal and was able to pick up the Viper.

18 Mr. Mitrov also testified that he rented a
19 rental car because he was out of a car. And he also
20 testified that Mr. Leventhal did in fact give him
21 rental car costs for that rental. And Mr. Leventhal,
22 initially when asked, we asked him about a rental
23 car, he said he had no knowledge of it, did not give
24 him money, but Mr. Mitrov's testimony states
25 otherwise.

1 It does not, as I said earlier, it does not
2 matter that Mr. Mitrov also considers Mr. Leventhal a
3 friend. The fact of the matter is from July of 2019
4 to June 2020, Mr. Leventhal and Mr. Mitrov had an
5 attorney-client relationship. Mr. Mitrov retained
6 Mr. Leventhal as his attorney from that period, and
7 during that period he did allow Mr. Mitrov --
8 Mr. Leventhal to borrow both his Viper and his
9 Maserati.

10 Mr. Mitrov testified that there was never
11 any writing pertaining to either the retention of
12 Mr. Leventhal as his attorney nor was there any
13 writing related to Mr. Leventhal borrowing the Viper,
14 as well as the Maserati; therefore, there was no --
15 there was no writing describing the transaction
16 terms, those terms of him, Mr. Leventhal borrowing
17 those vehicles were not fair and reasonable to
18 Mr. Mitrov.

19 He was out of a car for a year. He did not
20 have access to his Viper for almost a year. He --
21 Mr. Mitrov was not advised in writing to the
22 desirability of seeking or given a reasonable
23 opportunity to seek advice of independent counsel,
24 nor did he give informed consent as to, in writing as
25 to Mr. Leventhal borrowing the Viper and the

1 Maserati.

2 1.8 states that a lawyer shall not enter
3 into a business transaction with a client or
4 knowingly acquire an ownership, possessory, security
5 or other pecuniary interest adverse to a client
6 unless those three things that I mentioned exist.

7 Mr. Leventhal had a possessory interest in
8 the Viper. He -- Mr. Mitrov did not have it. It was
9 adverse to him. He had the Viper for over -- for
10 almost a year. He had the Maserati for approximately
11 a month.

12 As to Sosa-Avila, again he admits,
13 Mr. Leventhal admits that he accepted the property as
14 collateral and, therefore, he had a possessory
15 interest adverse to those clients. And with that the
16 State Bar submits.

17 CHAIRMAN EDWARDS: Mr. Clark?

18 MR. CLARK: I will say this again, as to
19 Sosa-Avila she has no interest in stolen property,
20 period. And if the purpose of the rule is to prevent
21 overreaching by the lawyer, and that if he's going to
22 take collateral from her, it must be on terms that
23 are fair and reasonable to her, look at the facts.

24 She gave him stolen property. She got free
25 legal representation. He quashed her warrant and

1 then she stiffed him. I believe those are fair and
2 reasonable terms for her. It is undisputed that
3 those items were stolen. It is undisputed. There is
4 no countervailing testimony or evidence that those
5 items were not stolen.

6 He testified that he looked at the, he
7 looked at the discovery. The Louis Vuitton's in
8 there. There's a cellphone in, which he said that's
9 the iPhone, and when he talked to her about it, she
10 admitted, yes, those items are stolen. He was like,
11 okay, I need to submit that to Metro, and he did it
12 anonymously to protect her rights, as he's required
13 to do under Rule 1.6, confidentiality.

14 If those were her items, why isn't she here?
15 The reason is she's still facing charges, and she
16 doesn't want to waive her Fifth Amendment rights,
17 that's why she's not here. They couldn't find her.
18 They can't reach her.

19 Those items were stolen. And I would submit
20 to you again that if it's a stolen item, it's a crime
21 for her to possess it. She has no legitimate lawful
22 possessory interest in a stolen piece of property;
23 therefore, technically he cannot take a possessory
24 interest adverse to her as a matter of law.

25 You can think, well, he thought he could and

1 so he did, so he attempted to. That's not what they
2 pled. They pled that he violated 1.8A because he
3 took a possessory interest adverse to her. I'll say
4 it again, I've said it before, if it's stolen, she
5 does not have a legitimate interest that he can be
6 adverse to her on.

7 The State Bar's burden of proof is clear and
8 convincing, which in my brief I say is evidence that
9 establishes every factual element to a high
10 probability. So on Avila Sosa the undisputed
11 testimony is those three items were stolen. The
12 undisputed testimony is that the drone was a gift.
13 Now, yes, he said in his letter that the drone was
14 collateral; however, in his motion for summary
15 judgment he declared under penalty of perjury that it
16 was a gift. In his verified answer he denied that it
17 was collateral.

18 Maribel Godinez testified here clearly,
19 unequivocally that no, no, no the husband and wife
20 came in and that drone was a gift. He can accept a
21 gift. There's no violation of 1.8A for a gift,
22 period. They have no adverse interest because they
23 unsolicited voluntarily gave him the drone. And the
24 State Bar did not plead 1.8C which is accepting
25 gifts. They didn't plead that. They chose just

1 1.8A. So those four items as a technical matter
2 there's no adverse interest.

3 And again let's step back to the policy
4 reasons for 1.8. So he is not overreaching and he
5 does not take advantage of her. He didn't take
6 advantage of her, she took advantage of him. Again,
7 you know, he quashed her warrant so she wouldn't lose
8 her kids and go to jail, and she never paid him dime
9 one on the \$6,000.

10 And look at the fee agreement where it says
11 she agrees that she has discussed the arrangement of
12 fees with another lawyer, that her signature is
13 informed consent, and she agrees to it. And she had
14 done that after she said, I'll just give you property
15 right now so that we can get you going. And he said
16 fine. He didn't keep it, he didn't benefit from it,
17 he didn't profit from it. There was no overreaching
18 on her. He didn't gain any unfair advantage. He
19 didn't engage in overreaching her. He just said,
20 fine, I'll take it but you've got to pay me money.

21 Every time they called her they said, You've
22 got to pay us money. They were expecting a thousand
23 dollars in April and what she came in was with
24 another piece of property. That wasn't their
25 agreement, so he did not knowingly accept it. He did

1 not -- so he couldn't have given her, you know, a
2 preapproval or a pre-disclosure, he didn't even know
3 it was coming in. In fact, he didn't know what was
4 coming in at all.

5 But apparently no good deed goes unpunished
6 because even though he did the work for her, he never
7 got paid for it. And when he found out it was
8 stolen, he turned it over to the police anonymously
9 to still protect the rights of his nonpaying client.
10 The State Bar now insists that it's a possessory
11 interest and we have to challenge him for it. No,
12 technically it's not a violation. Policy-wise it's
13 not a purpose of discipline.

14 As to Mr. Mitrov. Mr. Mitrov. Todd
15 testified he never gave him \$5,000, which is curious
16 because Mr. Mitrov testified that he didn't rent the
17 car because of Mr. Leventhal's action. So when the
18 State Bar says, well, there's this \$5,000, it's of no
19 moment. It's not adversity.

20 He said, I just -- I rented it because the
21 Maserati didn't have air conditioning. I didn't rent
22 it -- I didn't rent the vehicle because of Todd, and
23 I never asked him for it back. I never asked him to
24 pay for it, he did that out of the kindness of his
25 heart. Todd disputes that. He never paid him

1 \$5,000. We don't know where Mr. Mitrov is coming up
2 with that, but Todd never paid him. Frankly if he
3 did pay him, he would have said so. Like, look, I
4 mitigated this problem, I paid this money.

5 But Mr. Mitrov submitted that. He never
6 told the State Bar that it was paid until last week.
7 I submit that's a ridiculous statement. He's given
8 different versions of where he is. He wanted to
9 withdraw the grievance way back in September. Said,
10 look, I want out of this. I'm not harmed here, it's
11 a misunderstanding, just let me go home. He's not
12 out anything. He's not injured or damaged. He's,
13 like, look, I'm fine. It was a favor. He didn't
14 give him -- let him use the Viper because he was his
15 lawyer, which is the purpose of 1.8.

16 And the legislative history says that if the
17 lawyer -- if the client feels compelled to do that,
18 then the attorney is using their fiduciary
19 relationship for an improper purpose and they're
20 overreaching. That's not what he did here. He said,
21 look, I know him, I just let him use it.

22 As to the Maserati, Mr. Mitrov specifically
23 denies the State Bar allegations regarding any
24 exchange of transaction or any use of the Maserati.
25 He said, look, I don't even know if he even sat in

1 it. I don't even know if he drove it. And as to
2 both vehicles, at least the Viper, he says, look,
3 when I went and picked it up, it looked like it had
4 never been driven, which supports Mr. Leventhal's
5 testimony that, look, yes, I drove it once. I drove
6 it to Pahrump, I came back and it failed and then I
7 had it towed into the shop, okay, but he didn't have
8 it.

9 He said, go get it, it's at the shop. He
10 didn't have possessory interest in it, it was at the
11 shop. There was nothing keeping it at -- from
12 Mr. Mitrov going to get it at the shop and taking it
13 home. There's no evidence that Mr. Leventhal had it
14 for a year, it was in the shop. And Mr. Mitrov could
15 have picked it up at any time.

16 Mr. Mitrov is all over the place on his
17 testimony, his sworn testimony. He wanted to -- he
18 wanted his grievance withdrawn in September. He
19 wanted his grievance withdrawn in December. And
20 in -- last week he says, look, I don't want anything
21 to do with this. I have no other beef with
22 Mr. Leventhal. I want nothing from him.

23 So the purpose of 1.8 is to protect the
24 clients, he doesn't have a problem with
25 Mr. Leventhal. He's all square and fine.

1 Mr. Leventhal even got him a deal on restitution,
2 kept it out of the court records, and he never even
3 bothers to pay it, but again no good deed goes
4 unpunished, and now Mr. Leventhal is standing here
5 having not profited a dime off of any of this and is
6 facing charges.

7 I would submit to you that on Amalia
8 Sosa-Avila it is not a violation as a matter of law.
9 I would submit to you that as to Mr. Mitrov, it's not
10 a violation either because it wasn't formed by -- it
11 wasn't compelled by the attorney-client relationship.
12 He did it as a favor for a friend. So I'd submit on
13 that. Thank you.

14 CHAIRMAN EDWARDS: Thank you. Anything else
15 from the State Bar?

16 MR. GOSIOCO: Just briefly, Mr. Chairman.
17 As to Miss Sosa-Avila, as Mr. Clark had stated, they
18 said the evidence shows that the items alleged -- the
19 items dropped off as collateral, the drone, Louis
20 Vuitton purse, the iPhone, and the diamond ring were
21 proven to be stolen; however the evidence shows,
22 based on the police report, the discovery, that
23 Mr. Leventhal testified to, and he also wrote in his
24 response that he admits that he reviewed and signed
25 that all those items were collateral. He testifies

1 that they were all -- he accepted those as
2 collateral.

3 And just briefly as to the cellphone,
4 Mr. Clark argues that the discovery associated with
5 Miss Sosa-Avila's criminal case listed a cellphone;
6 however, the only mention of a cellphone was under --
7 it stated type: Miscellaneous, in parenthesis,
8 cellphones, bicycles, worthless doc, items not
9 listed, and then there was a description. The
10 description said one Discover card, red, white and
11 blue was used at a Home Depot and gas. The
12 "miscellaneous" is simply a drop-down menu to
13 classify the items.

14 MR. CLARK: I'm going to object to that.
15 That evidence is not -- that testimony is not in
16 evidence that it's a drop-down menu.

17 CHAIRMAN EDWARDS: Overruled.

18 MR. GOSIOCO: Essentially the description of
19 that states, does not state a cellphone at all,
20 merely right above the description it states "type."
21 And so one can -- one can logically conclude that
22 that's just a type of item that was associated with
23 the alleged crime, and the description itself was
24 actually a Discover card, not an iPhone. And with
25 that the State Bar submits.

1 CHAIRMAN EDWARDS: Thank you. Mr. Moore,
2 any questions for counsel before we go into
3 deliberations?

4 COMMISSIONER MOORE: No, sir.

5 CHAIRMAN EDWARDS: Mr. Lee, any questions?

6 COMMISSIONER LEE: Question for Mr. Clark.
7 If we look at Rule 1.8, and it specified intent as
8 knowingly as one of the standards, is the issue the
9 question of intent at the time of the transaction, if
10 there's a business transaction, or a knowingly
11 acquisition of a security interest at the time of the
12 transaction? And if your answer is just simply what
13 you've already said related to the stolen property, I
14 already understand that, just go ahead and say that,
15 but if you have something new to add, let me know.

16 MR. CLARK: Well, I would submit there's no
17 business transaction at all because there was no
18 moneys that were attached or changed hands. And as
19 to knowingly acquire, I -- my emphasis is again on
20 adverse to the client, by definition it cannot be
21 adverse to stolen property as she has no interest in
22 it.

23 COMMISSIONER LEE: Okay. So the same answer
24 that you had before. I understand.

25 Then for Bar Counsel, you know, this is a

1 different type of case than I've seen before. Like,
2 what exactly is the suggestive discipline under the
3 ABA standards that you would be looking for?

4 CHAIRMAN EDWARDS: Mr. Lee, we're going to
5 first deliberate as to whether there was a rules
6 violation. To the extent there is, we will come back
7 and discuss possible sanctions.

8 COMMISSIONER LEE: Okay. I understand.
9 Like, generally in these screening panels it's part
10 of the argument, so I was a little confused.

11 CHAIRMAN EDWARDS: Sorry, I should have made
12 that more clear.

13 Anything else?

14 Okay. Kristi, can you kick us out into our
15 private room please.

16 MS. FAUST: I will put you in the room right
17 now.

18 (A recess was taken.)

19 CHAIRMAN EDWARDS: Okay. We are back on the
20 record after the panel has deliberated as to whether
21 there was a violation of the rules. As to Count 1,
22 the panel has unanimously found that there was a
23 violation of Rule 1.8A.

24 In Exhibit 11 the respondent confirmed that
25 he reached an agreement with the client to accept

1 collateral. At that point in time he had an
2 obligation to comply with Rule 1.8A to obtain
3 informed and written consent from the client with
4 regard to the security agreement. He failed to do
5 so.

6 We have not seen any legal authority and we
7 don't think it makes sense that the attorney can be
8 relieved of his ethical obligation under Rule 1.8A if
9 it is later discovered that the property happened to
10 be stolen.

11 As to Count 2, by a vote of two to one the
12 panel has concluded there was a rules violation, a
13 1.8A violation as it relates to the Viper. The
14 respondent's possession of the Viper became adverse
15 when the client repeatedly demanded its return and
16 the vehicle was not returned. At that point in time
17 the obligation, Mr. Leventhal had an obligation to
18 comply with Rule 1.8A. Given the lack of any written
19 informed consent from the client at that point in
20 time, we find a rules violation.

21 We find unanimously that the State Bar has
22 not reached its burden as it relates to the Maserati.

23 So that's our ruling. If we can take a
24 five-minute break, be back here to start the second
25 phase. And again, Counsel, I'd ask you to do what

1 you can to streamline this as much as possible so we
2 can finish this today please. Off the record please.

3 (A recess was taken.)

4 CHAIRMAN EDWARDS: We are back on the record
5 for the second phase of this disciplinary hearing.

6 State Bar?

7 MR. GOSIOCO: Thank you, Mr. Chairman. In
8 light of the panel finding violations of, two
9 violations of Rule 1.8A, the State Bar would move to
10 admit and publish to the members of the panel
11 Exhibit 2, which is the affidavit of prior discipline
12 for Mr. Leventhal.

13 CHAIRMAN EDWARDS: Mr. Clark, any objection?

14 MR. CLARK: No objection.

15 CHAIRMAN EDWARDS: Exhibit 2 is admitted.

16 (Thereupon Complainant's Exhibit

17 2 was admitted into evidence.)

18 MR. GOSIOCO: Thank you, Mr. Chairman. Now,
19 as to the suggested punishment, the ABA annotated
20 standards for imposing lawyer sanctions, that's the
21 standards we go by. For this conduct we are looking
22 at standard 4.32 which states, Suspension is
23 generally appropriate when a lawyer knows of a
24 conflict of interest and does not disclose to a
25 client the possibly effect of that conflict, and

1 causes injury or potential injury to a client.

2 And the book also states that knowledge is
3 the conscious awareness of the nature or attendant
4 circumstances of the conduct but without the
5 conscious objective or purpose to accomplish a
6 particular result.

7 Right in the rule of 1.8A that rule states
8 that lawyers shall not enter into a business
9 transaction with a client or knowingly acquire a
10 possessory ownership, security, or other pecuniary
11 interest adverse to a client; therefore, as a --
12 since there was a violation of 1.8, and based on
13 Mr. Leventhal's conduct, he knowingly acquired a
14 possessory interest adverse to both Miss Sosa-Avila
15 as well as Mr. Mitrov.

16 Now, once we have the standard, the ABA
17 suggests that we are to look at any aggravating or
18 mitigating circumstances which apply, and those
19 factors are codified in Nevada Supreme Court Rule
20 102.5. As to the aggravation, SCR 102.5 sub 1, the
21 State Bar believes that the following, the following
22 aggravating factors apply to this instant proceeding.
23 First, sub 1A, which is prior disciplinary offenses.

24 I see that Kristi had just circulated the
25 affidavit of prior discipline. And based on this,

1 there was a public reprimand issued to Mr. Leventhal
2 on August 23, 2016 for violations of RPC 1.5, fees;
3 1.7, conflict of interest to current clients; 1.8,
4 conflict of interest to current clients: Specific
5 rules; 5.4, professional independence of a lawyer;
6 and 8.4, misconduct.

7 And just a SparkNotes version of the public
8 reprimand. Mr. Leventhal was retained by a Charlene
9 Ellis. There was a flat fee retainer agreement
10 executed between Mr. Leventhal and Miss Ellis. The
11 fee agreement stated that the fee was nonrefundable
12 and was, quote, fully -- paid in full by issuance of
13 quitclaim deed, APN 41-471-13, Nye County, Nevada
14 without encumbrance.

15 In that public reprimand it states that,
16 "The nonrefundable fee agreements and subsequent deed
17 transfer failed to comply with the rules of
18 professional conduct, as well as the guidelines set
19 forth in the State Bar of Nevada Standing Committee
20 on Ethics and Professional Responsibility Formal
21 Opinion 15 and 37."

22 It also stated that Mr. Leventhal "failed to
23 reasonably explain the terms of the fee agreement to
24 Ellis in a manner she could properly understand, and
25 you failed to provide Ellis a reasonable opportunity

1 to retain the advice of independent counsel as to
2 whether it would be in her best interest to enter
3 into the agreement.

4 "The transaction was also unreasonable in
5 light of your failure to provide the promised
6 services to Ellis. Although you argued she
7 improperly fired you, in fact, it created a conflict
8 of interest with Ellis by using Zane to evict her
9 from her home, which resulted in your foreseeable
10 termination."

11 The State Bar also believe that sub 1B
12 applies, dishonest or selfish motive; 1C, a pattern
13 of misconduct; sub G, refusal to acknowledge the
14 wrongful nature of conduct; and sub I, substantial
15 experience in the practice of law. It looks like
16 Mr. Leventhal was barred here in the state of Nevada
17 September 25, 2003.

18 And as to mitigation, Supreme Court Rule
19 102.5 sub 2, the State Bar finds that there are no
20 mitigating factors that apply in this case. And the
21 State Bar also did want to briefly touch upon Supreme
22 Court Rule 102.5 sub 2 sub C which states that
23 factors which should not be considered as either
24 aggravating or mitigating factors including sub C,
25 withdrawal of grievance against the lawyer.

1 Taking all of that into consideration, the
2 State Bar would recommend that the panel impose a
3 one- to two-year suspension for Mr. Leventhal, or
4 whatever term that the panel sees fit, as well as to
5 impose Supreme Court Rule 120, costs, for the
6 suspension. And with that the State Bar will submit.

7 CHAIRMAN EDWARDS: Okay. Mr. Clark?

8 MR. CLARK: Thank you, Mr. Chair. The State
9 Bar is essentially telling you that for this conduct
10 Mr. Leventhal is a threat to the public. He's a
11 threat to his clients. And look at what he's done.
12 The purpose of 1.8 is to prevent overreaching, taking
13 advantage. As he says in his -- in the ABA
14 standards, cause injury or probable injury to the
15 client.

16 I would submit to you that on Amalia
17 Sosa-Avila there utterly was no injury to her. There
18 was no injury at all. There is no selfish or
19 dishonest motive to that. He took collateral so that
20 she would pay him. She never paid him. He wasn't
21 looking to get these items. He wasn't looking to
22 get, you know, the Hope Diamond with this. He was
23 going to give it all back to her, and that's
24 undisputed testimony.

25 The panel has found that he, regardless of

1 whether it was stolen, he should have followed the
2 forms of 1.8, and I would still submit that his fee
3 agreement does that. But more importantly if this is
4 a violation, if accepting as collateral ultimately
5 stolen property is a violation, I would submit that
6 this is a technical one at best. I still disagree.
7 I think it's been a law, it isn't but the panel has
8 found that it is.

9 But what's the sanction for that? She came
10 into his office crying. She was in warrant. She was
11 going to lose her children. He said, Okay, fine,
12 I'll represent you. He gets the warrant quashed and
13 she says, I can't pay you now but I'm going to give
14 you something to get you started. He goes, okay,
15 fine. Should he have done that? No. Is he going to
16 do that again? No. But he didn't profit from this,
17 from this collateral. He didn't -- he didn't take
18 advantage of her from this collateral.

19 So as I said in my trial brief, the sanction
20 must fit the violation, and it must be individually
21 tailored. And but this one for Amalia Sosa-Avila,
22 there was no selfish motive. He didn't get any money
23 off it. He wasn't looking for money. He was looking
24 to get her out of warrant, to quash the warrant so
25 she wouldn't go to jail, but he wanted her to pay

1 him. She never paid him. So what did he do? He
2 didn't get paid but yet he still got her out of
3 warrant. He still got her free. That's what he did.

4 And then what else did he do in mitigation?
5 When he discovered that they were stolen property,
6 and that is an undisputed fact, he did the right
7 thing and turned it over to the authorities, again
8 without saying who he got it from so he could protect
9 his client, who again never paid him.

10 She was not injured here. She benefitted
11 here. He's the one who's left being punished. She's
12 not even being punished for possession of stolen
13 property. He's the one being punished because he
14 helped her out and got her out of warrant.

15 We can have a disagreement as to whether or
16 not this is a violation at all; however, if it's a
17 violation, I would say in the scheme of things in
18 what we need to teach the Bar, what we need to teach
19 our members, and what we need to teach the public,
20 this is not worthy of a suspension. It just isn't.

21 He didn't follow the forms, and she gave him
22 stolen property. He's got to live with that, and
23 that's what he's doing now. But it's not like he's a
24 predator out there taking advantage of her. He
25 got -- he got set up on this one. He shouldn't have

1 done it. He should have followed the forms. He
2 should, you know what, you know, I don't -- I don't
3 do collateral any more. I don't do any of this. I
4 don't do anything but money, and she would have gone
5 to warrant and she would have been arrested and she
6 would have lost her kids. Instead he said, I'll help
7 you out. And he did what he was retained to do,
8 wasn't paid for it, but he did what he was retained
9 to do. There's no selfish motive here.

10 As to Zan Mitrov, he testified that he did
11 this because he was his friend. He didn't testify
12 that Mr. Leventhal used his good offices to impose
13 this on him. And remember what he said. He said, I
14 didn't rent -- I didn't rent the Escalade because he
15 had the Viper, I rented it because I chose to. I
16 chose to rent it. So it's not like his violation
17 caused that impact.

18 And he had the Maserati back. And the panel
19 found there was no violation of that. So he chose on
20 his own to rent the Escalade. And then what's he do?
21 He puts -- he puts that bill into his grievance to
22 get Mr. Leventhal's attention, as he says. And then
23 he says, And now we're all good. He goes, I didn't
24 ask him for the money back, he agreed to pay me.

25 We again still don't know what he's talking

1 about. He didn't pay him. But Mr. Mitrov did this
2 on his own accord. It's not that like Mr. Leventhal
3 abused his office and put pressure on Mr. Mitrov.
4 Mr. Mitrov said he didn't feel any pressure. So,
5 yes, he borrowed the car. He didn't know how long he
6 had it. He drive it once. Mr. Mitrov said it looked
7 like it had never been driven. It was in the shop.
8 It didn't deprive him of a car because he said he
9 always had a car. He had the Maserati.

10 So, yes, did he take a possessory interest
11 in this? You found that he has. I would submit to
12 you that it's among these two, one who buys and
13 drives vintage cars and Mr. Leventhal, this is not a
14 suspension-worthy event. He's not a predator. He's
15 not out there needing to be removed from the practice
16 of law.

17 And remember what he did for Mr. Mitrov. He
18 got him a good deal when he was facing felonies. He
19 got him -- he got it reduced. He got him a deal for
20 restitution outside the order so it couldn't be court
21 enforced, and Mr. Mitrov walked away from that. He
22 said, I'm not even going to pay that.

23 So he did what he was retained to do. He
24 did it well. He didn't benefit financially from
25 this. He got to drive the car once, and then it was

1 in the shop and he, you know, I guess he forgot about
2 it. But should he have filed the forms? Yes. Okay,
3 you should have filed those forms. But this is not a
4 suspension-worthy infraction because the impact on
5 the consequences are not suspension-worthy.

6 He received a public five years ago on many
7 violations, and this is what he agreed to, this was a
8 conditional guilty plea, he pled to this, he agreed
9 to -- he accepted responsibility for it. He said,
10 I'll take my lumps for this. It wasn't contested.
11 He didn't fight it, he agreed to it.

12 And there was a 1.8 violation there, but all
13 the other ones are not present here. It's just a 1.8
14 violation. And that was a house, this is stolen
15 property and the temporary use of a car. I would
16 submit to you that he is not -- he's not getting
17 worse. He is not down this road and not learning
18 from his mistakes and getting worse such that we have
19 to ramp up the suspension, ramp up the discipline for
20 a suspension.

21 What he's doing is he's got these two small
22 matters. It's not like he had the last time with the
23 house for which he got a public, all right. He
24 agreed to a 1.8 violation for a house and got a
25 public.

1 Here he's got a 1.8 violation for accepting
2 as collateral stolen property that he later turned
3 over to the police and for driving a vehicle from a
4 client who never thought it was part of his
5 representation and didn't even miss the car. He
6 wanted it back, but it didn't prevent him from
7 driving the other cars.

8 So we would submit that this is not a
9 suspension case. We would submit that this is,
10 frankly, a letter of reprimand case, at most a
11 public, but I think it -- I don't -- it does not
12 rise -- he's not a threat to the public here. He's
13 not demonstrated that he's a threat to the public.
14 He was doing them a favor. He did them good work.

15 And I think that under these circumstances,
16 under what he was found guilty and what his
17 violations are, it does not land in suspension.
18 Thank you.

19 CHAIRMAN EDWARDS: For the State Bar?

20 MR. GOSIOCO: Nothing further, Mr. Chairman.

21 CHAIRMAN EDWARDS: Mr. Clark, I guess my gut
22 reaction is in light of this 2016 public reprimand
23 for, at least in part the same violation, it seems to
24 me that that did not work to deter respondent's
25 conduct in this situation. He got reprimanded for

1 taking property from a client without going through
2 the, without complying with the Rule 1.8, and then
3 just a few years later he's doing the exact same
4 thing. And I guess my concern is a reprimand
5 apparently wasn't enough the first time, but talk me
6 through that.

7 MR. CLARK: I would -- thank you, Mr. Chair.
8 I appreciate the chance to respond to your concerns.
9 Remember that the public reprimand was for a host of
10 violations: 1.8, 1.5, 5.4, 8.4 and then warranted a
11 public. And again for the narrow 1.8, it was a
12 house. She signed over the deed to a house.

13 And, I mean, if you look up possessory
14 interest, that always comes up with a property
15 interest. And, in fact, that's what happened here.
16 So he's not doing that again. It's not -- it's not
17 the same equivalency of getting a house signed over;
18 whereas, here he says, Fine, I'll quash your warrant,
19 and if you want to give me collateral until you get
20 the money to pay me, I'm okay with that. Or, fine,
21 I'll defend you in this felony as long as you pay the
22 restitution and can I drive your car. He didn't kick
23 anybody out of their house.

24 I would suggest -- and, again, if this is
25 the only violation, I would submit to you that he has

1 learned from that one. It's certainly not on that
2 scale. And I still maintain I think they're very --
3 they're quite technical. It's not an equivalent and
4 it's not amplification of his prior misconduct, so he
5 has learned.

6 He is learning and this is nowhere near of
7 the scope of that misconduct, nowhere near the scope
8 of that client harm. And in this case, again, he was
9 helping his clients. He did good work for his
10 clients; whereas, in the other one, the prior public
11 reprimand talks about, well, did he actually follow
12 through on it. Here he did. He did his job.

13 And the Avila Sosa one, he did it without
14 pay. And in the Zan Mitrov one he actually didn't
15 get fully paid on that one either, and neither did
16 the victim get their restitution. But he did his
17 job.

18 So that's why I would say -- you could say,
19 well, we have to take a step up because it's the same
20 violation, I would submit to you that it's not the
21 same violation. It's the same rules violation, but
22 the characteristic of the two are very different.
23 And because this one is such a diminished one, these
24 two, it doesn't warrant an escalation of discipline
25 that the State Bar wants, suspension, a two-year

1 suspension which would require him to apply for
2 reinstatement, so that adds another 18 months to it.
3 So I would submit on that. Thank you.

4 CHAIRMAN EDWARDS: Mr. Clark, I apologize if
5 I missed it, but do you have a recommended sanction
6 that we should consider?

7 MR. CLARK: I'd recommend -- I think for
8 Avila Sosa I think it should be a caution. It's a
9 technical violation, but the panel is empowered to
10 say even with a violation we can impose no sanction,
11 but a caution. This is -- this is an odd one, I
12 would submit to you. And as for Zan Mitrov, I would
13 think a reprimand in that regard would be sufficient.

14 CHAIRMAN EDWARDS: Okay. Mr. Moore, any
15 questions?

16 COMMISSIONER MOORE: No sir.

17 CHAIRMAN EDWARDS: Mr. Lee?

18 COMMISSIONER LEE: I also echo Mr. Edwards'
19 concern related to the prior discipline. I didn't
20 hear you address the aggravating or mitigating
21 circumstances, you know, category by category like
22 Bar Counsel did, other than perhaps the prior
23 discipline. If you want to put anything on the
24 record related to the aggravating or mitigating
25 circumstances, that would probably be helpful.

1 MR. CLARK: Okay. I thank you for that.
2 Under 102.5(2), circumstances in mitigation, absence
3 of a dishonest motive or -- dishonest motive, either
4 way. Absence of a selfish motive in Miss Sosa-Avila.
5 You can argue that he did act out of self interest
6 for the vehicle.

7 No personal problems. I think he did make
8 timely, good faith efforts to rectify the
9 consequences of his misconduct with Sosa-Avila. He
10 found out they were stolen and he returned the stolen
11 property to the police so they could do the right
12 thing. And, again, she's gone.

13 Full and free disclosure to the disciplinary
14 authority. Yes, I took the collateral. Yes, I
15 borrowed the car to drive it. He didn't hide that.
16 He was not unforthcoming with the State Bar. I know
17 the panel has problems with while his response said
18 one thing, which was more damning than what he said
19 under oath, but I think the fact that he didn't, you
20 know, the drone was not part of this, and his
21 assistant confirmed that, that just goes to his, you
22 know, he just dismissed it.

23 But when the truth was told when he filed
24 his verification, he files his declaration he said,
25 look, I didn't take the drone as collateral, it was a

1 gift. And there's nothing to dispute the fact that
2 it was, in fact, a gift, other than his misstatement
3 in his letter to Louise Watson.

4 I think his character and reputation came
5 out when he said he's been practicing here since, you
6 know, 2000. He was a U.S. Attorney. He, you know,
7 worked for Kamala Harris. He, you know, he's been a
8 prosecutor. He's been a longtime criminal defense
9 attorney. He does good work.

10 I don't believe there's any delay in the
11 proceedings. I think he does have remorse. You
12 talked to him when he said, look, you know, he's
13 still concerned that he's the only one being punished
14 for the stolen property. He's still concerned that
15 Mr. Mitrov said, look, we're all good, we're all
16 good, I don't want to do anything else, and he's
17 still being punished for that or being disciplined
18 for that.

19 But I think he does realize that, look, you
20 know, I won't -- I won't do this anymore. I'm sorry
21 I did it, if I didn't spell this out, you know, in
22 2020 when time stands still, I'm -- you know, he's
23 like I probably should have, and that's on him and
24 now he's going to have to live with that.

25 So I think those are the mitigating factors,

1 as said along with what actually landed on the
2 clients, along with what work he did do for them,
3 along with the fact that he didn't really profit from
4 this at all. Okay, he drove a car once, twice. I
5 don't see that there's a real monetary profit from
6 that. And from Miss Sosa there was nothing. He got
7 nothing. He worked for nothing.

8 So those are the mitigating factors as I see
9 them. Thank you for letting me do that.

10 COMMISSIONER LEE: Thank you. No more
11 questions.

12 CHAIRMAN EDWARDS: I have a question for the
13 State Bar. You heard Mr. Clark suggest (inaudible).

14 THE REPORTER: I'm sorry, Mr. Edwards. I
15 couldn't hear you. Can you repeat that?

16 CHAIRMAN EDWARDS: Sorry. Can you hear me
17 better now?

18 THE REPORTER: Yes.

19 CHAIRMAN EDWARDS: Okay. Mr. Clark
20 suggested one type of penalty for Count 1 and another
21 penalty for Count 2. I'm looking at the, I call it
22 the cheat sheet, or I guess the jury verdict form
23 that the state Bar usually circulates, and footnote 1
24 says the ultimate sanction imposed should at least be
25 consistent with the sanction for the most serious

1 instance of misconduct among a number of violations.

2 I guess do you agree with Mr. Clark that we
3 can do I guess two -- one type of sanction for Count
4 1 and a different type of sanction for Count 2 or do
5 they need to be combined? What's your take?

6 MR. GOSIOCO: Thank you, Mr. Chairman. And
7 my position on that is I believe that both instances
8 with regard to Miss Sosa-Avila and Mr. Mitrov are
9 very similar in nature. I think that it would be an
10 error to apportion one type of discipline for
11 Miss Sosa-Avila and one different sanction for
12 Mr. Mitrov. I think because the nature of both
13 grievances are very similar, both 1.8 violations,
14 both very similar as far as the rule violation, I
15 believe that there should be just one sanction for
16 both violations.

17 CHAIRMAN EDWARDS: Okay. Mr. Clark, any
18 response to that?

19 MR. CLARK: As I put in my brief, ABA
20 standard 1.3 says that the sanctions must be
21 tailored. We've looked at these -- these have been
22 tried as separate violations. They're not
23 intertwined. Mr. Mitrov showed up, you know,
24 Miss Sosa-Avila did not show up. I think they're
25 clearly distinct. They clearly have different

1 impacts on the client.

2 So I think -- I certainly think you can. I
3 certainly think that that's a measured thing to look
4 at because the sanction must conform to the
5 violation, and it must conform to the attorney's
6 individual conduct in each. So I think -- I think
7 it's perfectly acceptable to do that.

8 CHAIRMAN EDWARDS: Okay. Mr. Moore,
9 anything else?

10 Mr. Lee?

11 COMMISSIONER LEE: Bar Counsel, it seems to
12 go from a public reprimand to a two-year suspension
13 is quite a jump. How do you justify the two-year
14 suspension? And if you've already addressed it, I
15 appreciate that, it just seems to be quite a jump.

16 MR. GOSIOCO: Right. Thank you. And as
17 Mr. Edwards and you had stated, our concern is
18 essentially in 2016 Mr. Leventhal had received a
19 public reprimand for numerous violations but
20 including -- one of them being the same exact RPC
21 violation that we are, you know, discussing today. I
22 think that the State Bar, the State Bar's goal is
23 really to protect the public, not necessarily punish
24 the lawyer.

25 But as the panel members had stated, 2016

1 was not that long ago. The evidence in this case
2 states that Mr. Mitrov retained Mr. Leventhal in
3 2019, I believe that was the same case for
4 Miss Sosa-Avila, but he was already reprimanded in
5 2016, and one of those violations was for 1.8
6 violation. And in that order it mentioned
7 essentially the same things here, he didn't inform
8 the client reasonably of the terms in writing, didn't
9 have the opportunity to seek independent counsel,
10 there was no informed consent.

11 So it's clear that Mr. Leventhal didn't
12 learn from this public reprimand. And as far as the
13 State Bar's recommendation, as I stated, I believe a
14 one- to two-year suspension would be appropriate, or
15 whatever the panel deems is appropriate in this case.

16 COMMISSIONER LEE: I have no more questions.

17 CHAIRMAN EDWARDS: Okay. Anything else,
18 Mr. Clark?

19 MR. CLARK: I would just say that the cases
20 that talk about violations of 1.8 speak to business
21 transactions, they speak to getting loans from
22 clients on sweetheart terms, they speak to, you know,
23 taking advantage of clients. And I don't think in
24 these two cases you have that. You don't have -- I
25 mean, what's the cost of the car? There's no cost to

1 collateral because nobody kept it. The cost was to
2 him.

3 So the fact that he, well, he didn't learn
4 from prior mistake, this isn't that mistake. It's a
5 1.8 violation but there's a whole range of 1.8
6 violations. You have to look at, you know, what
7 actually happened, and you have to look at, you know,
8 what is this worth. What would we have to do here to
9 protect the public? What would we have to do here so
10 that other lawyers don't do this, you know, don't
11 take collateral and then get their client out of
12 warrant and then get stiffed. You know, borrow a car
13 for a while but then give it back.

14 And I don't think -- I just -- I don't think
15 that in order to send a message, in order to correct
16 his behavior that you have to, you know, put him on
17 suspension for two years. I don't think this is -- I
18 just -- I don't find a suspension is appropriate for
19 what you need to correct, let me put it that way.

20 You don't need to suspend him and take him
21 out of circulation, remove his livelihood in order to
22 say, you know what, don't take collateral, you know,
23 and then turn around, you know what, you know, have
24 your clients, if they're going to lend you a car on
25 their own accord, not as a lawyer, you know, put it

1 in writing, okay. Just remember to do that so that
2 your clients can have a more informed consent. Just
3 do that.

4 But at the end of the day these are
5 violations of the forms. But it's not the injury, I
6 would submit to you, that the rule is designed to
7 prevent on a larger scale that would bring disrepute
8 to lawyers and disrepute to the integrity of the
9 legal system, you know, that a big loan would do or
10 frankly even, you know, getting the house. This is
11 not that -- this is not that violation. It is the
12 same violation, it's not the same severity of
13 violation. Thank you.

14 CHAIRMAN EDWARDS: All right. Thank you.
15 We will -- did the State Bar have something they
16 wanted to say in response?

17 MR. GOSIOCO: Yes, if possible,
18 Mr. Chairman. Just -- just one minute. I would like
19 to comment on the mitigating factors that Mr. Clark
20 had mentioned in response to panel member Lee's
21 injury.

22 Mr. Clark mentioned several mitigating
23 factors under SCR 102.5 sub 2. The State Bar
24 disagrees with each one of those mitigating factors,
25 but specifically I just did want to point out two,

1 particularly 102.5 sub 2 sub C, which is personal or
2 emotional problems.

3 I believe what I heard Mr. Clark testify --
4 state was that Mr. Leventhal does not have any
5 personal or emotional problems. If my -- if
6 that's -- if that was a correct statement by
7 Mr. Clark, then I would, I would argue that sub C
8 does not apply as mitigation.

9 MR. CLARK: I didn't say that it did. I'm
10 sorry, if I misspoke, I apologize. I didn't say that
11 it did. I say, well, he doesn't have personal or
12 emotional problems. I was just talking out loud. I
13 apologize if I was confusing.

14 MR. GOSIOCO: Okay. Then I'll move on. And
15 then the next subsection, sub D, a timely good faith
16 effort to make restitution or to rectify consequences
17 of misconduct. Our position is that Mr. Leventhal
18 did not make timely good faith effort to make
19 restitution or to rectify the consequences of his
20 misconduct, especially for Mr. Mitrov.

21 Mr. Mitrov, as we saw in his -- heard in his
22 testimony that he asked numerous times to get the
23 Viper back. We saw the text messages of the numerous
24 text messages to Mr. Leventhal from Mr. Mitrov asking
25 for the Viper back, and it was only until Mr. Mitrov

1 filed a grievance against Mr. Leventhal that
2 Mr. Leventhal returned the Viper. And so, therefore,
3 the State Bar's position is sub D especially should
4 not apply as a mitigating factor. And with that the
5 State Bar submits.

6 CHAIRMAN EDWARDS: What about full and free
7 disclosure?

8 MR. GOSIOCO: I'll submit to that. I have
9 no comment to that.

10 CHAIRMAN EDWARDS: Okay. Thank you. Let's
11 go off the record.

12 (A recess was taken.)

13 CHAIRMAN EDWARDS: We are back on the
14 record. The panel has now deliberated on the penalty
15 phase of this proceeding. We started analyzing the
16 lawyer's mental state, and we believe the mental
17 state was knowingly. The respondent knowingly agreed
18 to accept property from Miss Sosa-Avila as security
19 but didn't comply with 1.8 and knowingly kept
20 possession of Mr. Mitrov's Viper after he repeatedly
21 asked to have it returned.

22 As for injury, as to Miss Sosa-Avila we find
23 little or no injury because the property that was
24 conveyed to respondent was not actually hers. As to
25 Mr. Mitrov and the Viper, we find injury or potential

1 injury. And I guess maybe more precisely we find
2 injury.

3 He was without his Viper for almost six
4 months after he requested it back, and he was, during
5 the summer, forced to rent a vehicle because he did
6 not have that Viper. Despite the fact that he had
7 another vehicle that he could have used, that vehicle
8 did not have air conditioning, which is why he rented
9 another one. So we believe he had -- that Mr. Mitrov
10 suffered an actual injury.

11 Based on those findings, we believe that ABA
12 standard 4.32 applies, and that the baseline sanction
13 is a suspension. Analyzed the aggravating and
14 mitigating circumstances. For aggravating
15 circumstances we find prior disciplinary offenses.
16 We find a selfish motive. At least two of the panel
17 members were concerned that the keeping of
18 Mr. Mitrov's car for such a long period of time made
19 it look like he was holding the car hostage in able
20 to -- in an effort to get payment from the client.

21 We find a pattern of misconduct based on
22 these two counts here. Some of the panel members had
23 concerns about Mr. Leventhal's credibility in his
24 testimony, but we did not find it sufficient to find
25 an aggravating circumstance of submission of false

1 evidence or false statement, that we don't believe
2 that one applies.

3 We believe that there's been a refusal to
4 acknowledge the wrongful nature of the conduct.
5 Didn't get a sense that Mr. Leventhal really
6 understood that this was a big deal, especially in
7 light of his past conduct.

8 And the last aggravating circumstance is
9 substantial experience in the practice of law.

10 As for mitigating circumstances, we find
11 that Mr. Leventhal had full and free disclosure to
12 the disciplinary authority and a cooperative attitude
13 toward the proceeding.

14 We did not consider the fact that Mr. Mitrov
15 withdrew his grievance, and we likewise did not
16 consider that Mr. Sosa-Avila did not appear to
17 testify today at the hearing.

18 With those findings, we believe the
19 appropriate sanction is a one-year suspension
20 suspended to go into effect only if respondent
21 receives a reprimand or worse over the next five
22 years.

23 In addition, over that five-year period, the
24 respondent needs to do one additional hour of ethics
25 CLE a year and one additional hour of law practice

1 management CLE a year. Again that's over the entire
2 five-year period. Plus costs.

3 Do the parties have any questions?

4 MR. CLARK: Yes. When you -- this is David
5 Clark. When you say "reprimand," a letter of
6 reprimand or public reprimand?

7 CHAIRMAN EDWARDS: I guess it's my
8 understanding they're all one and the same now,
9 right?

10 MR. CLARK: Well, they're different levels
11 but they practically come out the same. They're
12 published.

13 CHAIRMAN EDWARDS: I guess the idea is any
14 reprimand.

15 MR. CLARK: Okay.

16 CHAIRMAN EDWARDS: We're not talking about
17 an admonition, right, because that's a dismissal.

18 MR. CLARK: Or a caution, yeah. I'd ask
19 reprimand for any violation or for this rule?

20 CHAIRMAN EDWARDS: Any violation.

21 Panel members, anything I missed?

22 COMMISSIONER LEE: No.

23 CHAIRMAN EDWARDS: Okay. Thank you,
24 everybody.

25 MR. CLARK: Thank you.

MR. GOSIOCO: Thank you.

(Thereupon the proceedings
were concluded at 4:32 p.m.)

* * * * *

CERTIFICATE OF REPORTER

STATE OF NEVADA)

SS:

COUNTY OF CLARK)

I, Deborah Ann Hines, certified court reporter, do hereby certify that I took down in shorthand (Stenotype) all of the proceedings had in the before-entitled matter at the time and place indicated; and that thereafter said shorthand notes were transcribed into typewriting at and under my direction and supervision and the foregoing transcript constitutes a full, true and accurate record of the proceedings had.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 8th day of June, 2021.



Deborah Ann Hines, CCR #473, RPR

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